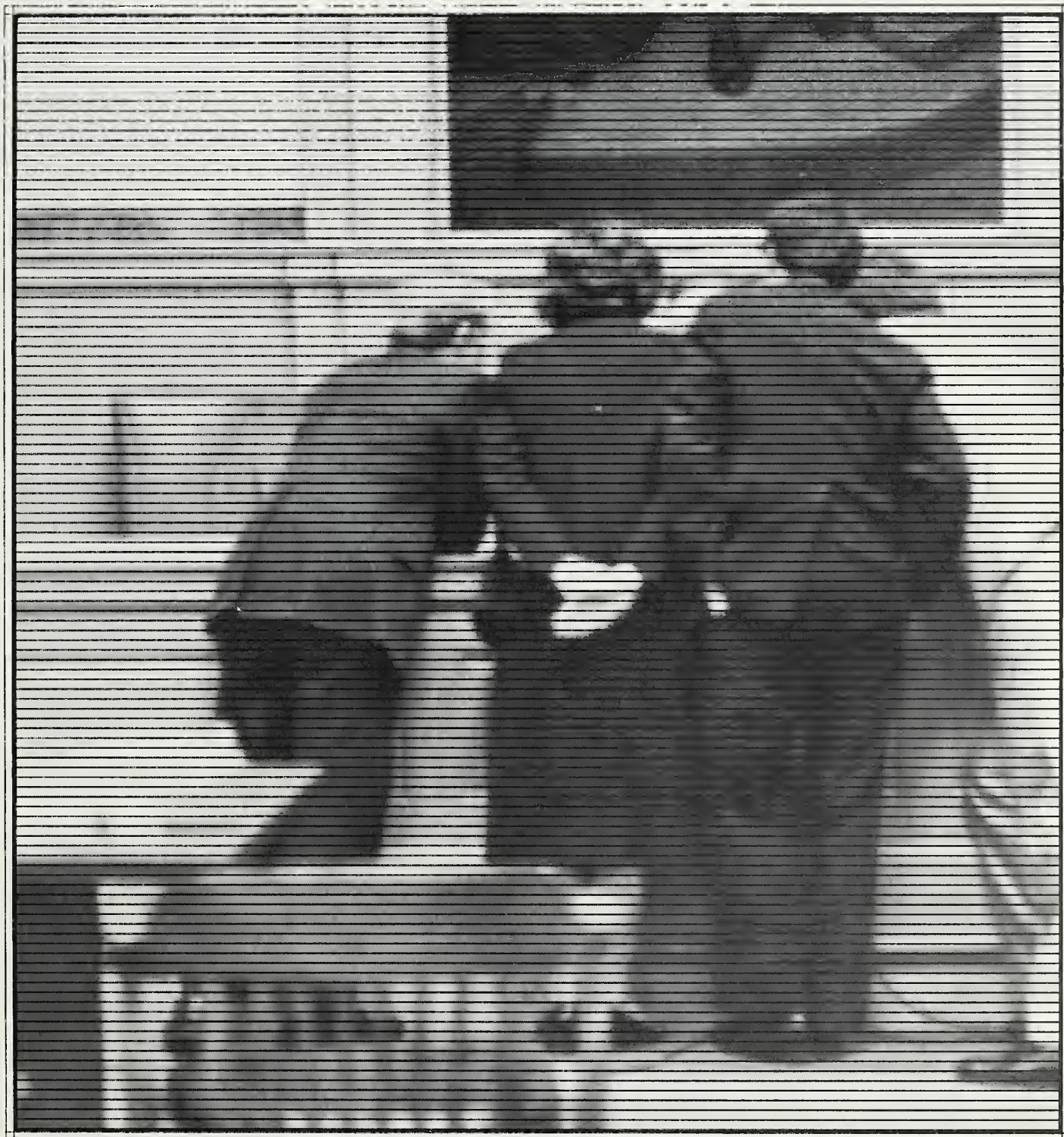


Wake
Forest

JURIST

FALL 1981 VOL. 12, NO 1



Continuing Legal Education (WF-CLE)

The Wake Forest Continuing Legal Education Program (WF-CLE) has successfully completed its second year under the direction of Professor Charles H. Taylor, who has shaped and directed the program from its inception. Recent programs have included the Annual Review Institute 1981 (Winston-Salem, Charlotte, Raleigh, Asheville), the North Carolina Tort Practice Institute (Winston-Salem) and the 1981-82 Tax Institute and "The New Tax Package" (Winston-Salem and Raleigh). These programs as well as the accompanying publications have been well subscribed and enthusiastically received by the lawyers of this state. In addition, prior publications, including the North Carolina Business Practice Handbook and The North Carolina Family Law Handbook, continue to enjoy marked demand.

As the WF-CLE program has developed, it has become apparent that a systematic directed framework for the future will best serve CLE needs in North Carolina. Accordingly, WF-CLE, after studying other CLE offerings in and out of state and consulting with attorneys, academicians and judges, has formulated a long term framework for bringing improved, more permanent and highest quality CLE programming and publications to North Carolina.

The nucleus of this program is a series of North Carolina transactional substantive programs and handbooks. Initial programs and handbooks have focused on Family Law, Business Practice, Torts and Real Property. Additional "bread and butter" transactional areas will be treated. Each program and publication comprehensively highlights those areas of greatest value to the practitioner. A selected speaker-writer mix guarantees individuals who can direct their unique experiences and insights toward the problems and issues under discussion.

In addition to these substantive programs and handbooks, North Carolina practice manuals will be published periodically. They will provide a systematic practice approach to the subject matter transactions of the handbook which they accompany. Procedures, forms, practical tips and key statutes will be provided. Practice checklists will also be contained in the manual. These features will expedite the handling of routine cases, thereby saving time and money. They will also facilitate avoiding the more common errors and omissions.

The third prong of the expanded WF-CLE framework is a series of supplements to each of the substantive handbooks and practice manuals. These supplements will preserve the usefulness of the publications by addressing legislative and judicial revisions in the law and noting subsequent case law in accordance with precedent previously cited in the books.

This WF-CLE program will bring to North Carolina a long overdue systematized North Carolina handbook and practice manual series of improved, more permanent, reasonably priced and highest quality CLE publications.

The North Carolina Tort, Business Practice and Family Law Practice programs and handbooks were the initial programs under this format. All of these comprehensive North Carolina Practice Handbooks are available at this time.

The up-coming program under this format is the North Carolina Real Property Practice Institute (Raleigh, March 26-27, 1982). This program, as well as the accompanying handbook, will address the subject of real estate transactions and practice in North Carolina.

On April 23, 1982, the first North Carolina practice manual, the North Carolina Family Law Practice Manual, will be available. The institute accompanying it will be held in Winston-Salem. The supplement to the North Carolina Family Law Handbook will also be available at that time.

In addition to this series of transactional handbooks and manuals, WF-CLE will

continue to provide quality programs and publications in selected other areas of interest to practitioners. Typical of these other areas are our Annual Review Institute, the North Carolina threshold annual CLE program and publication; our successful 1981-82 Tax Institute and "The New Tax Package", the primary North Carolina CLE program addressing this key area; and our upcoming May 28, 1982, North Carolina Drunk Driving Cases Institute (Winston-Salem), which will be supported by the North Carolina Drunk Driving Cases Manual, being prepared as the definitive North Carolina publication in this area. A complete listing of upcoming programs is noted below.

As the WF-CLE program continues to evolve, its primary goal will be to provide needed quality CLE programs and publications for the North Carolina general practitioner. Alumni who have not yet attended a WF-CLE institute or obtained a manuscript are encouraged to test the quality of our programs and publications. Wake Forest is one of the "Big Three" North Carolina CLE programmers, claims the distinction of producing the "highest quality" North Carolina CLE publications, and is recognized as having the strongest law school CLE program in the state. We plan to retain these distinctions which evidence that the traditional Wake Forest School of Law commitment of service to North Carolina is alive, viable and well.

Let us hear from you and see you at WF-CLE.

1982 WF-CLE PROGRAMS

DATE	TOPIC	CITY
March 26-27	N.C. Real Property Practice	Raleigh
April 23	N.C. Family Law Practice 1982	Winston-Salem
May	Estate Planning for Professionals	Winston-Salem
May 28	N.C. Drunk Driving Cases	Winston-Salem
Sept. 3-4	"Annual Review Institute, North Carolina 1982"	Winston-Salem
Sept. 10-11	"Annual Review Institute, North Carolina 1982"	Asheville
Sept. 17-18	"Annual Review Institute, North Carolina 1982"	Charlotte
Sept. 24-25	"Annual Review Institute, North Carolina 1982"	Raleigh
Oct. 15-16	N.C. Trial Practice & Skills-Civil	Winston-Salem
Nov. 12-13	N.C. Auto Tort Practice	Winston-Salem

Dean's Letter

The heart and soul of every law school is its faculty. It is certainly possible to operate a first class law school in physical facilities which have something to be desired. It may also be possible for a law school to provide a sound legal education to its students despite the fact that its library may not include every research resource available to the profession. It is patently impossible however for a law school to achieve a level of excellence substantially greater than the cumulative sum of the talent, expertise, experience, and character of its faculty members. The tone and tenor of the law school experience, and the nature and extent of the personal and professional growth of the students and graduates of a law school are to a large extent reflections of the composite qualities of its faculty. The character of a law school changes as its faculty changes and grows as its faculty grows. On a broader scale, the face of legal education changes as the factors and conditions governing the attraction and retention of outstanding lawyers as teachers in the law schools are altered.

In the years since World War II, law school faculties have evolved through a series of stages which have profoundly altered the nature of legal education in this country. The flood of World War II veterans produced an overnight expansion in the size of most law schools and an immediate demand for additional faculty members. Many schools were able to meet this demand by attracting back from private practice some of their own outstanding alumni. These men came with built-in loyalties, with roots already established, and with educational concepts and goals very similar to those of the school from which they had graduated. Mobility and change were not very high on their order of priority.

As the tide of veterans gradually receded, so also did the demand for legal education. Many schools were able to retain faculty positions as student numbers diminished, and student-faculty ratios reached unusually favorable levels. Classes became smaller, and were easier and more fun to teach. Movement of faculty members between law schools became extremely difficult, and for twenty years most law faculties, and their curricula, enjoyed a period of relative stability. Faculty members remained in place, through loyalty or necessity, and were able to develop professional expertise and reputation in their own areas to an unusual degree.

That stability was shaken by the wave of

student unrest and violence which erupted on university campuses, and by the more intense, but more rational, critical examination of the educational process which followed. At the same time, faculty salary scales began to lag badly behind comparable professional income. Law school teaching was no longer as profitable or as comfortable or as much fun as it once was, and the composition of many law faculties began to erode as teachers moved on to more attractive areas of the profession.

These developments were completely overshadowed however by the tidal wave of new applicants which inundated the law schools in the early 1970's. Most law schools sharply increased their size and a large number of new law schools opened their doors. Although faculty expansion could not keep pace with enrollment growth, an unprecedented demand for new faculty members arose, and keen competition for quality faculty prospects developed among the law schools. At the same time the growing needs of the law firms in an increasingly healthy practicing profession produced competitive starting salary offers far beyond the resource capabilities of most law schools. Law school faculty recruitment became a far more difficult and far less certain process than it had ever been, at precisely the time when most law schools were forced to add a large number of new people to their faculties in a short period of time. The long range results of these circumstances have yet to be realized. Almost immediately they produced law school faculties with an unusually wide range of backgrounds and interests, relatively little institutional loyalty and a high degree of ready mobility between law schools. Stability was no longer the order of the day. A sense of excitement and movement and innovation had taken over and had begun to reshape legal education to meet the needs of the profession in the years ahead.

With no major exception, the events which I have just outlined might well be a description of the development of the Wake Forest School of Law faculty since 1945. A solid faculty core was assembled in the years following 1950 which nurtured and built upon and refined the traditions and values around which Wake Forest had grown. For twenty years that group of men created the Wake Forest which many of us have known. As the law school gradually expanded and adapted to its new environment in Winston-Salem, new faculty mem-

bers made their subtle changes to the law school personality, but the mainstream direction remained in the hands of that stable faculty core.

This core had already begun to erode when the applicant tidal wave hit Wake Forest. In a few short years the size of the faculty almost doubled, and replacements had to be found for all but one of those original faculty members. This was precisely the time when the faculty recruitment process had become chaotic, and when quality faculty candidates were in unusually short supply.

Even this extensive turnover did not complete the expansion process, however. Faculty size had lagged far behind the growth in enrollment, and the student-faculty ratio had gotten completely out of hand. The personal attention which had always been the hallmark of a Wake Forest education had been badly diluted. To remedy this situation seven new positions have been added to the faculty in the last three years, and three more will be added next year. Once again a huge infusion of new blood will eventually have a marked effect on the future character of the Law School.

Under these circumstances it is nothing short of remarkable that any of "the Old Wake Forest" remains in the School of Law today, but much of it does. Many of the good things that we remember about the school have survived, and will continue to distinguish the law school from its competitors. The important thing for all of us to understand, however, is that the people you will read about in this issue of the *Jurist* are the Wake Forest of tomorrow. The law school will emerge in their collective image, and, to the extent that you wish to make it happen, in yours. Your professional stake in the law school is almost as large as theirs, and your emotional stake is probably much larger, at least at this point. It is important that you get to know them, and through them enlarge your views of modern legal education. It is perhaps more important that they get to know you, and through you begin to get some understanding of, and feel for, what it means to be a graduate of Wake Forest. As the new faculty settles in and as the new character and personality of the law school begin to evolve, your involvement, your links with tradition, and your sense of perspective can help to provide the stability and continuity of purpose which are essential to the development of a truly great law school.

Editor's Corner

I am a firm believer in the rule that a magazine should stand on its own merits. Therefore, an explanation as to the quality or purpose of this publication is on that premise superfluous. However, since I feel compelled to share thoughts with you concerning our goals for this year and the reasons for our selection of special features, I leave the decision as to the value, wisdom or necessity of these remarks to your judgment.

Each issue of the *Jurist* includes a statement of purpose. It sets the general rule for content, frequency of publication and distribution. Although this editor feels that the license which goes with the job allows some modification, it would be beyond the authority conferred upon me by the preceeding board to disregard the rule entirely. Therefore, because this first issue on its face appears to disregard the duty of the magazine to its readers as prescribed by that statement, let me share with you our plans for the year and justify the changes we have made for the 1981-1982 editions.

First, we will continue to distribute two issues. Next, breaking with tradition, we will divide the usual content between the two issues rather than trying to cover law school news and alumni activities in each edition. This issue, for instance, includes news of the school, with the special feature on the faculty. We also include the usual notes on modifications and changes in the law. On the other hand, the spring issue will include alumni news and features and student activities and awards, in addition to student-written notes and comments on the law. Essentially, these two issues will provide as much information and generally the same type of information which those of you who have been reading the *Jurist* over the last ten years of its publication have come to expect; packaging is just a little different.

Following a decision to emphasize the school this fall, we devoted one-half of this issue to the current teaching faculty. I recommend the "Letter from the Dean" for the rationale behind that decision. In addition, when reading the profiles consider that the purpose was not to develop the full personalities of our faculty but rather to highlight their academic and professional lives. Also note that the information included is the result of editorial pruning of what was a virtual forest of achievements. Initially, we had planned to include a com-

plete bibliography, but alas, that is a task we leave for another staff, another year.

Other plans for the year, besides dividing the content between the two issues, include reviving one of the original purposes of the *Jurist* which was to publish short legal articles written by students currently enrolled at the law school. If successful, the magazine would enable more students to enjoy the thrill of publishing while providing a broader range of information to the practitioner. This issue we are pleased to carry an article by third-year student Mollie Weaver. Although the article is not short, we believe the quality is superb, compensating for the lack of brevity. Also as relates to legal articles, we will continue to encourage faculty and alumni to contribute. In this issue we are pleased that Mal Osborn let us share with you the greater part of a speech he delivered to a breakfast club on the timely subject of tax procedural changes.

Another focus for this year and one which I hope will continue is the emphasis which we intend to place on the CLE program here at the law school. Many of you are already familiar with its work and will appreciate the prominence we place on the information they give us to publish. We begin this commitment by assigning the announcement strategically on the inside front cover.

Our plans for the spring issue are ambitious. Under the direction of Joey Lamb we will compile an updated list of professional addresses and news of alumni based on information which reaches our office by the middle of February. Most of you received a letter this fall from the staff about our plans. I hope you will take the time to let us hear from you and especially will give some thought to our request for the names of special alumni which you think we should recognize. We would like to make this feature a regular one with the *Jurist*.

There are several omissions in this issue which I regret. Rather than risk misinterpretation, let me explain. For instance, photographs of some of the faculty are missing. It was not from a lack of cooperation on their part or effort or interest of the staff. However, with staff away for the holidays, I decided to distribute with the omissions rather than delay production until after the Christmas break. Secondly, I fully intended to include biographical sketches of the faculty emeriti. However,

because each of those gentlemen is so well known, our photograph of them at the recent Christmas brunch held in the library will probably be more welcome than anything we could have written. Also, because of lack of space, I had to sacrifice a note on Diminished Capacity and Partial Responsibility which Bob Erlich had given us. It will appear in the spring issue.

The photographs are such a special feature of this issue of the *Jurist*, I would be remiss if I did not thank Lucia Bacot for the time she spent in this effort. I should also like to extend personal thanks to Dr. Robert E. Lee for contributing the complete list of faculty which appears on pages 29 and 30. It would have been difficult if not impossible for us to have compiled this chronicle for you.

For a cooperative staff and many special favors, I am very grateful.

Allene C. Keith
Editor



Cover: David Lennon, Christine Myatt, Robert Graff and Hance Jaquett confer with the Honorable Hal Walker during their trial. *In Re Will of Piper*. This trial is one of many trials that are conducted during the fall and spring semesters for Trial Court. Heavy student enrollment in this course indicates the popularity of practical courses.

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The Law Faculty 1981-1982



Group Faculty Picture (left to right) Top Row: T. Roberts, Sizemore, Logan, Parker, Castleman, Shores, Wellman, Rose, Peeples, Weathers, Walker, and Lauerman **Bottom Row:** R. Bell, Dowdy, Corbett, Scarlett, Telly, Zick, B. Taylor, Billings, Reynolds, Bond, and Newman (not pictured: Covington, Eichengrun, P. Roberts, and C. Taylor)

Law School Administrators 1981-1982

John D. Scarlett *Dean*

Dean Scarlett was born and grew up in a suburb of Reading, Pennsylvania. His undergraduate education was at Catawba College in Salisbury, N.C., interrupted by 32 months of military service during World War II. He received his B.A. in English in 1948. In the spring of 1951 he graduated from Harvard Law School and was employed as an associate with Lundgren and Lincoln, a small Wall Street litigation firm. In 1953 he became Assistant Director of the Institute of Government at the University of North Carolina, where he assisted in the organization and operation of the legislative reporting service for the North Carolina General Assembly.

He entered legal education in 1954 when he joined the faculty of Ohio Northern University Law School. The following year he returned to North Carolina as a member of the faculty of the Wake Forest Law School, where he taught until 1963. In 1960-1961 he was on leave of absence for a Congressional Fellowship in Washington, D.C., and later served as Assistant Counsel for the Senate Judiciary Committee.

In February 1963 he was appointed Dean of the Law School of the University of South Dakota and served in that capacity until June 1968. While there he founded the South Dakota Law School Foundation and was involved in a massive rebuilding of both the budget and the image of the law school, and the development of effective cooperation between the law school and the South Dakota Bar. He was a member of the South Dakota Judicial Council, and of the Board of Governors of the South Dakota Bar Association.

He accepted the position of Dean of the Drake University Law School in 1969 and held that position until May 1979. During this period he served as Chairman of the Iowa Crime Commission, as a member of the Board of Directors of the General United Insurance Co., as a member of the Advisory Board of Crenlo Industries, and as Speedy Trial Act Reporter for the Federal District Court for the Northern District of Iowa. He has been active in law association activities, and has served on

committees of state and local bar associations in three states and of the American Bar Association. He worked closely with the young lawyers in South Dakota and Iowa and sat as an advisory member to the Board of Governors of the Young Lawyers Section in both states.

For the past fifteen years he has been active in the work of the Association of American Law Schools and the Law School Admission Council. He has served as Chairman of the Governmental Relations Committee of the Association, and as Chairman of the LSAC Committee on Financial Aid for Graduate and Professional Students.

Since May of 1979, he has served as Dean of the Wake Forest University School of Law.

Leon H. Corbett, Jr. *Associate Dean and Professor of Law*

Leon H. Corbett, Jr., joined the Wake Forest School of Law faculty in 1968. He received his J.D. and his B.A. from Wake Forest University through its combined degree program. Dean Corbett adroitly manages several responsible positions at Wake Forest University. Currently, he is a Professor of Law and Associate Dean at the School of Law. In addition, his appointment as Associate General Counsel to Wake Forest University and the responsibilities of that position have placed him within the total community of Wake Forest University providing a valuable liaison between the law school and the university.

Following graduation from law school, Dean Corbett served in the Judge Advocate General's Corps with offices in Washington, D.C., from 1961-1964. After his military service Dean Corbett entered private practice for a year with his father's firm, Corbett and Fidler of Burgaw, N.C. From 1965-1967, he was a member of the staff of the Attorney General of North Carolina where he served as Revisor of Statutes, working with the General Statutes Commission. Prior to joining the Wake Forest School of Law faculty he

spent an additional year in private practice in Wallace, N.C.

In addition to his administrative and outside legal interests, Dean Corbett is an active teaching member of the School of Law faculty. He presently teaches Trial Court and Civil Procedure, has written three articles for the Wake Forest Law Review, and has co-authored a publication on North Carolina Criminal Procedure Forms with Wake Forest graduates James Van Camp and Sidney Eagles.

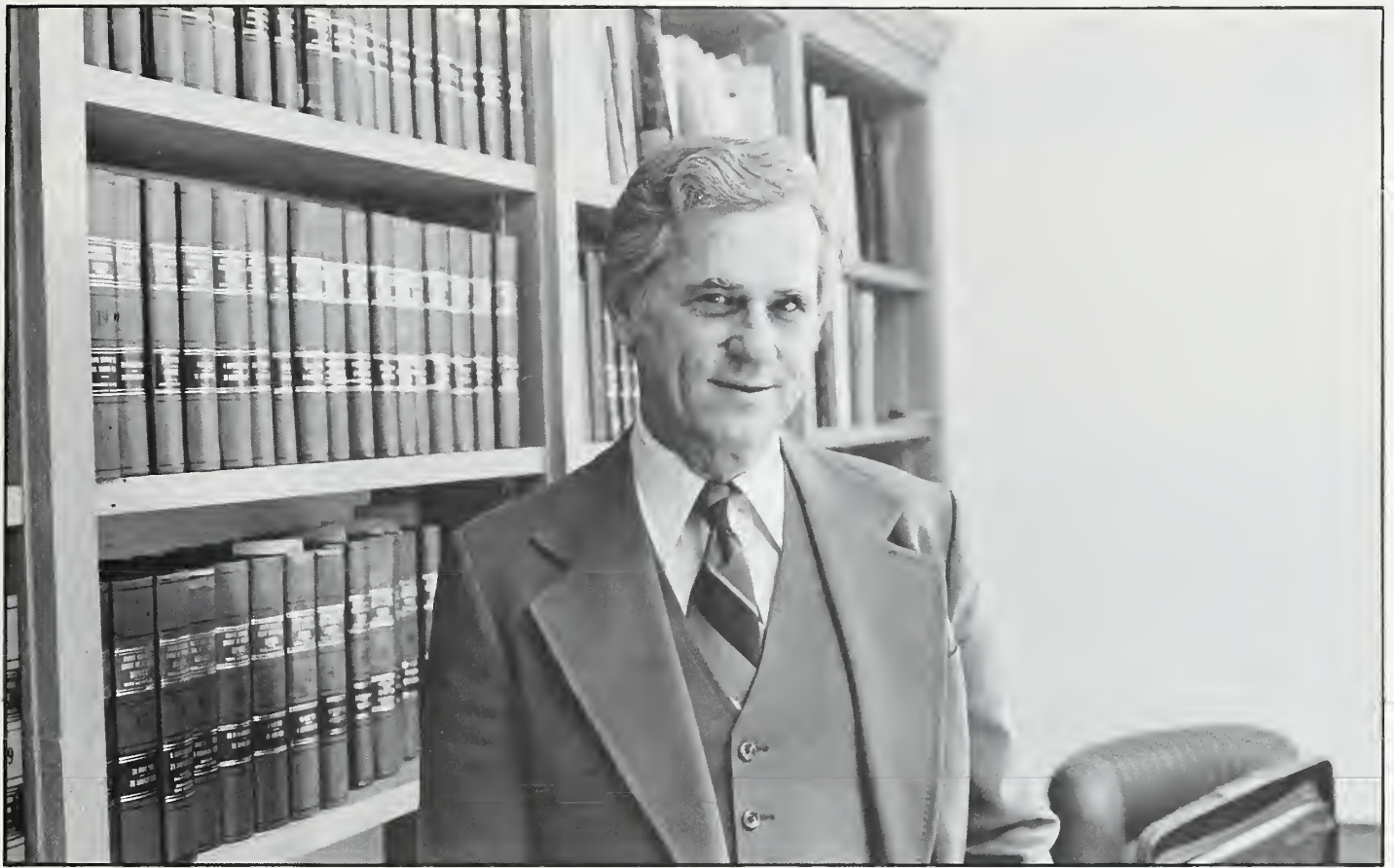
Dean Corbett's varied legal experience is reflected through his participation in numerous outside consulting positions. He was one of four consultant-draftsmen in the Criminal Code Commission's complete revision of the North Carolina General Statutes relating to criminal procedure and has done extensive work with programs of the North Carolina State Bar, N.C. Bar Association, Academy of Trial Lawyers, court rules committees, and others.

His published articles are *Parties and Joinder*, 5 Wake Forest L. Rev. 119 (1968), *Criminal Process and Arrest Under the North Carolina Pre-trial Criminal Procedure Act of 1974*, 10 Wake Forest L. Rev. 377 (1974), and *Post Trial Motions and Appeals*, 14 Wake Forest L. Rev. 997, (1978).

Robert F. Clodfelter *Associate Dean for Academic Affairs*

Already a familiar figure to Wake Forest law students from his having taught as an adjunct professor, Robert F. Clodfelter retired early from his position as Vice President of Wachovia Bank and Trust to become Associate Dean of Academic Affairs at the law school. At Wachovia, Dean Clodfelter had specialized in estate and business development for its trust department.

Dean Clodfelter, a native of Greensboro, North Carolina, completed his undergraduate work at Mars Hill College and Villanova University. He attended Duke University Law School, receiving his LL.B. in 1949 and was admitted to the North Carolina Bar



John D. Scarlett



Robert F. Clodfelter

Leon H. Corbett, Jr.



that year. During World War II, he served as an officer in the United States Navy.

The first step in Dean Clodfelter's banking career was in the trust department of Waccamaw Bank and Trust Company. Later, he was employed with the First National Bank and Trust Company of Asheville, coming to Wachovia Bank and Trust

Company, N.A., Winston-Salem, in 1956.

Dean Clodfelter's contributions to banking are well documented. He served a term as president of the Trust Division of the North Carolina Bankers' Association. Even now, he maintains an active association with the School of Banking of the South at L.S.U., where he coordinates the

Trust Procedure course offered as an elective to the third year students of the school at its annual summer session. Also, he teaches the estate planning course at the Southeastern Trust School at its annual summer session. This spring, in addition to his administrative duties, Dean Clodfelter will teach one section of Trusts.

Wake Forest University Law Faculty



Paul B. Bell

Paul B. Bell *Adjunct Professor of Law*

Mr. Paul B. Bell travels to the campus of Wake Forest once a week in the spring from his home in Charlotte, N.C., where he is the senior member of the firm Bell, Seltzer, Park and Gibson, to teach patent law.

Eminently qualified in this area of the law, Mr. Bell has since 1948 actively engaged in United States and international patent, trademark, and copyright law, including evaluating inventions, preparing and prosecuting United States patent applications in the United States Patent office and handling foreign patent applications. He is active in the work of the Licensing Executives Society, including the Committee on Laws of that organization, and FICPI (Federation Internationale des Conseils en Prsriete Industrielle), an international association of intellectual property attorneys.

In conjunction with these special professional interests, Mr. Bell has written articles on patents in the hosiery industry and has participated in a number of continuing legal education programs and seminars relating to patents, antitrust problems, and federal procedure.

Mr. Bell is a native of Charlotte, N.C. He received both his undergraduate B.S. (1947) and J.D. degree (cum laude, 1948) from Wake Forest University.

Mr. Bell is a member in the local and state bar associations, the American Patent Law Association, and the North Carolina Academy of Trial Lawyers.

Richard G. Bell *Professor of Law*

A member of the Wake Forest School of Law faculty since 1965, Professor Richard G. Bell's teaching responsibilities for the academic year 1981-1982 include Uniform

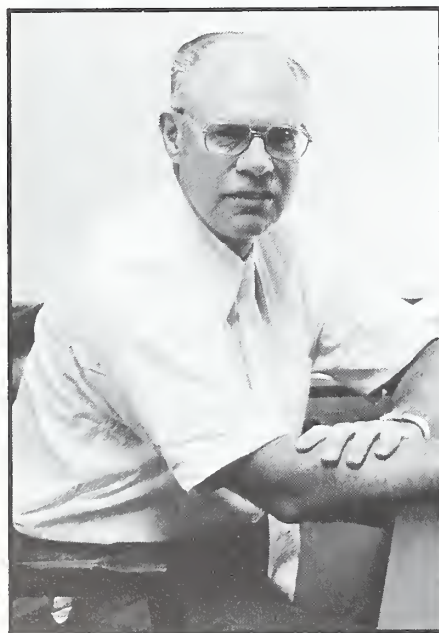
Commercial Code I and II, Agency and Partnership, and Wills and Probate Administration.

Professor Bell came to Wake Forest following 14 years of private practice in greater Cleveland, Ohio.

With a special interest in commercial law, Professor Bell, A.B., J.D., LL.M., has enriched this area of law by writing continually since 1967, the year in which was published *Negotiable Instruments Cases and Text*, a casebook text geared to UCC Articles 3 and 4. The Cumberland-Samford and Idaho law reviews have published articles by Professor Bell: *Negotiable Instruments; Banks and Customer Relations: A General Practitioner's Guide to the Uniform Commercial Code, Articles 3 and 4*, 2 Cumberland-Samford L. Rev. 266 (1971); *The Depositary Bank As a Holder in Due Course: A Case Study*, 8 Idaho L. Rev. 1 (1971). In 1973, editors of the Toledo Law Review selected for publication *The Payor Bank and Its Customer: an Analysis of Recent Cases*, 6 Toledo L. Rev. 110 (1974). Just recently, CLE of Wake Forest School of Law included as part of its 1981 summer handbook for the Triad General Practice Institute "Commercial Paper 1981-A Pragmatic Overview-Signatures" by Professor Bell, a fact which recommends the book as a practical one. These writings have enhanced Professor Bell's reputation for expertise in commercial law and confirm the choice of him as professor assigned to the second-year, year-long UCC course implemented this fall at Wake Forest School of Law.

Among other published writings by Professor Bell are two in the Wake Forest Law Review: *Book Review, Handling Consumer Credit Cases* by Clark and Fonseca, 9 Wake Forest L. Rev. 455 (1973) and *Administrative Law: The Proposed North Carolina Statutes for Registration and Publication of State Administrative Regulations*, 8 Wake Forest L. Rev. 309 (1972).

At present Professor Bell is preparing another casebook outline, this one for *Problems and Materials on Negotiable*



Richard G. Bell

University School of 1981-1982

Instruments by Whaley, to be published by Cambridge Law Study Aids, Chicago, Illinois, 1982.

Students who study under Professor Bell also can continue to rely with confidence on his continually updated course syllabus of North Carolina law of wills and probate administration, which "comes with" the course and is also available to others on request. A portion of this case and statutory outline is reflected in Professor Bell's 1981 Triad CLE Article, "Wills and Administration — Caveat Tips and Other Highlights."

Rhoda B. Billings *Professor of Law*

With experience as a district court judge for the 21st Judicial District of North Carolina (December 1968-December 1972), a Standing Trustee for Wage Earner Plans, United States District Bankruptcy Court, Middle District of N.C. (1967-1968), and a practicing attorney with Billings and Billings in Winston-Salem, Rhoda Bryan Billings joined the Wake Forest School of Law faculty in 1973. Professor Billings whose teaching responsibilities include Civil Procedure I, Constitutional Law, Trial Advocacy, and Criminal Procedure is actively involved in the areas of substantive and procedural criminal law in North Carolina through her membership on the N.C. Criminal Code Commission (member, 1970-75; consultant, 1975-present) and as a member and past chairman of the Criminal Law and Procedure Committee of the N.C. Bar Association.

Professor Billings obtained her J.D. from Wake Forest School of Law in 1966, graduating first in her class. Her student honors included membership on the Wake Forest Law Review, Associate Editor 1965-66, and recipient of academic awards from Law Week, American Jurisprudence, Corpus Juris Secundum, and Lawyers Title.

An active member of the N.C. Bar Asso-

ciation, Professor Billings continues to contribute to the legal profession through her involvement with that organization and participation in other professional associations. She is immediate past chairman and founding chairman of the N.C. Bar Association's Criminal Justice Section. She was a 1981 Team Leader of the N.C. Bar Association Trial Advocacy Seminar. She has been a lecturer for the Bar Review Course (Civil Procedure) and CLE lecturer for Wake Forest Continuing Legal Education program. In addition she has also served as instructor for the North Carolina Academy of Trial Lawyers Trial Advocacy course.

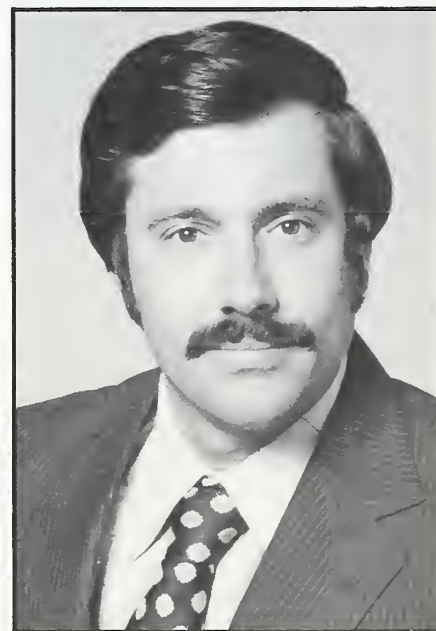
Her student article for the Wake Forest Intramural Law Review, was the beginning of a steady stream of published writings in several areas of the law. She was project director for 1975 Comparative Analysis of ABA Standards for Criminal Justice, N.C. Law, N.C. Pretrial Criminal Procedure Act, (Chapter 5A), and N.A.C. Standards and Goals. In 1974 *Pretrial Criminal Procedure Act: Scope and Objectives* appeared in the Wake Forest Law Review, 10 Wake Forest L. Rev. 353 (1974), and *Contempt, Order in the Courtroom, Mistrials* followed in 1978, 14 Wake Forest L. Rev. (1978). She contributed to Lee, *North Carolina Family Law*, 4th Ed. and is co-author of future supplements. She has also contributed to Wake Forest Continuing Legal Education handbooks in the areas of family law and juvenile law.

Guy M. Blynn *Lecturer in Law*

Professor Guy Blynn's expertise in the area of trademarks and copyrights is illustrated by his publications, service on various ABA committees, educational background and lectures in the classroom. Only his second year as a member of the Wake Forest University School of Law faculty,



Rhoda B. Billings



Guy M. Blynn



James E. Bond

Professor Blynn's accomplishments outside the classroom enrich his lectures in his unfair trade practices course.

Professor Blynn's flair for writing has led to the production of many noteworthy articles in the area of trademarks and copyrights. He co-authored an article for B.N.A., *Discovery Before the Trademark Trial and Appeal Board*, in 1978. The next year he wrote *Present at the Creation: The Cooperative Business Arrangement*, ABA/PTC section (1980). Recently, Professor Blynn completed an article for the USTA — Trademark Reporter (1981) entitled *Litigation Before the Trademark Trial and Appeal Board — The Equitable Defenses*. Proposals for future articles include: *The New North Carolina Trade Secrets Act*; *Intracorporate Transfers of Trademark Rights and Registrations*; and *Right of Publicity— A Critical Review of Current Trends*.

In addition to this multitude of writing, Professor Blynn has found time to both serve on various ABA committees and lecture in the area of trademarks and copyrights. While in New York, he was a member of the Association of the Bar of the City of New York, Trademarks and Unfair Competition committee (1976-1978) and the New York State Bar Association committees on trademarks and copyrights (1976-1978). Since moving to North Carolina, Professor Blynn has served as First Vice President (1979-1980) and President (1980-1981) of the Carolina Patent, Trademark and Copyright Law Association, Chairman of the State Trademarks Committee (1979-1981) and Chairman of the Federal Legislation Committee, Trademarks section (1981-1983). He is also a member of the American Bar Association, Patent, Trademarks and Copyright section. An avid speaker, Professor Blynn has spoken at the BNA's celebration of the twentieth anniversary of the Trademark Trial and Appeal Board (1978), the Fieldston Seminar (1979), and the 1980 annual meeting of the American Bar Association.

Professor Blynn received his J.D. cum laude from Harvard Law School in 1970. As an undergraduate, he attended the University of Pennsylvania Wharton School of Finance and Commerce, where he majored in accounting, minored in sociology and received his B.S. degree cum laude in economics. He won the Pennsylvania Institute of Certified Public Accountants Award and was a member of Beta Gamma Sigma during this period.

Following graduation, Professor Blynn joined the New York City law firm of Kaye, Scholer, Fierman, Hays & Handler (1970-1978) as an associate specializing in

trademarks, copyrights, unfair competition, entertainment, packaging and labeling, and some immigration law. In 1978, he became senior associate counsel in trademarks and copyrights for R.J. Reynolds Industries, Inc.

In addition to all of his writing, participation, lecturing and work, Professor Blynn is focusing his energies towards a new area of legal interest — law and the arts.

James E. Bond Professor of Law

Since joining the Wake Forest faculty in 1974 as a visiting associate professor, Professor James E. Bond has been prolific as a teacher, author and practitioner. At Wake Forest he has taught courses in administrative law, criminal law, criminal procedure, international law, jurisprudence, legal bibliography and, his first love, constitutional law.

Because he is noted among students for the enthusiasm with which he addresses legal questions and the meticulousness of his examination of legal principles, the fact that another book by Professor Bond will soon be available seems a fulfillment of the expected. *James Clark McReynolds, I Dissent* will be published in the spring of 1982. Professor Bond is also the author of *Plea Bargaining and Guilty Pleas* (Clark Boardman Co., Ltd., 1978). His first book, the second edition of which will appear that spring, *The Rules of Riot*, was published in 1974. A study of the State ratification process of the 14th Amendment to the United States Constitution is planned for 1983.

Professor Bond received his B.A. in political science from Wabash College in 1964 and his LL.B. from Harvard Law School in 1967. Following a one-year clerkship with the Federal District Court Judge for the Southern District of Illinois, Professor Bond began teaching as an instructor at the Judge Advocate's School in Charlottesville, Virginia. While teaching at this school, Professor Bond earned his LL.M. and S.J.D. degrees at the University of Virginia (1971, 1972 respectively). Before coming to Wake Forest, Professor Bond taught three years at Washington and Lee University Law School.

Professor Bond combines his interest in the School of Law with his other commitments to the legal profession. He is currently the director of the legal bibliography program at Wake Forest as well as the President of the North Carolina Fund for Individual Rights. Professor Bond also



Larry Wayne Bowman

teaches the North Carolina Bar/BRI course in Criminal Law.

Larry W. Bowman

Lecturer in Law

Larry Wayne Bowman began teaching at Wake Forest in 1977 in the area of juvenile law. While studying for his B.A. in Economics at Berea College, he was president of both the student government and the Baptist Student union, and a member of the college varsity debate team. The summers of his freshman and sophomore years were spent as a camp counselor; the summer of his junior year saw him somewhat further afield, in Liberia as a student missionary.

Following graduation in 1968, Mr. Bowman embarked upon his career involving the care and welfare of juveniles. From 1968 to 1971 he was a foster care worker in Roanoke, Va., with special responsibility for the placement and supervision of delinquent boys in foster homes and other alternative placements.

Mr. Bowman entered Wake Forest in 1971, graduating three years later with an honor J.D. During those three years he wrote for the Jurist, was a member of the Order of Barristers and of the National Moot Court Board.

Admitted to the North Carolina Bar in 1967, he went into private practice with Folger & Folger in Mount Airy, where he still resides, becoming a partner in 1978. One of his special interests was representing the Surry county Social Services Department in Juvenile Court cases. Since September 1981 Mr. Bowman has been as assistant District Attorney for the 17B Judicial District.

W. Joseph Burns

Lecturer in Law

W. Joseph Burns graduated cum laude with a B.A. from Wake Forest University in 1971, receiving his J.D. from the same institution three years later. While in law school, he was editor of the Wake Forest Law Review. Admitted to the North Carolina Bar in 1974, he spent a year as law clerk to the Honorable David M. Britt, judge for the North Carolina Court of Appeals.

He is presently a partner with Billings, Burns and Wells in Winston-Salem, and also serves as designated Trustee for the Bankruptcy Court, Middle District of North Carolina. Mr. Burns is a member of the

Forsyth County, North Carolina, and American Bar Associations, and the North Carolina State Bar. He is presently lecturer in law at Wake Forest, teaching a course in Office Practice.

Don R. Castleman

Professor of Law

Don R. Castleman joined the Wake Forest faculty in August 1979. He received his J.D. degree from the University of Tennessee Law School and his B.S. in pre-professional studies from Lambuth College. At Wake Forest he teaches courses in Trusts, Federal Estate and Gift Taxation, Agricultural Tax Planning, and Estate Planning. He is also in charge of the Judicial Clerkship Program.

After graduation from law school in 1967, Professor Castleman went into private practice for five years in Memphis, Tenn., specializing in corporate and tax law. He then acted as general counsel for Medical Development Services, Inc. in the same city until 1975, serving concurrently as president of Medilogic Corporation in Rockville, Md. and on the Board of three hospitals in Texas. In 1975 he moved to Iowa to take an associate professorship, followed by a full professorship, on the faculty of Drake University Law School in Des Moines.

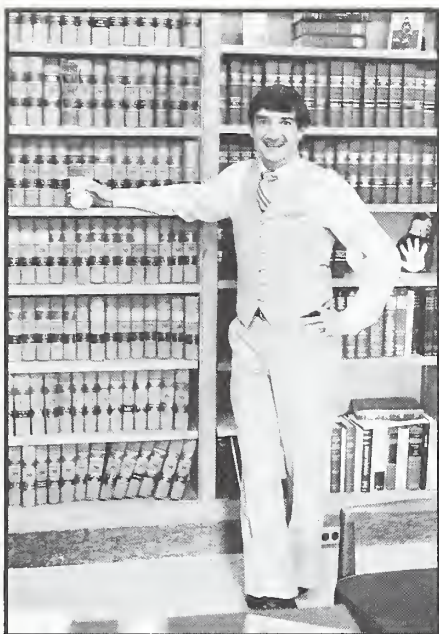
Professor Castleman's present legal interests center around taxation, estates, and comparative law. He was a member of a legal delegation to the People's Republic of China this past summer. He is currently a council member of the Tax Section of the North Carolina Bar Association, and is involved in two or three Continuing Legal Education programs every year, in addition to the CLE annual review.

Outside of the legal field, Professor Castleman is very interested in athletics serving as a member of the Wake Forest University Athletic Council. He is also a local league representative for the Pop Warner National Football League, and has coached Little League Baseball.

Professor Castleman is currently preparing an article on the system of taxation in Communist China and the role of taxation in its economy.



Don R. Castleman



I. Boyce Covington

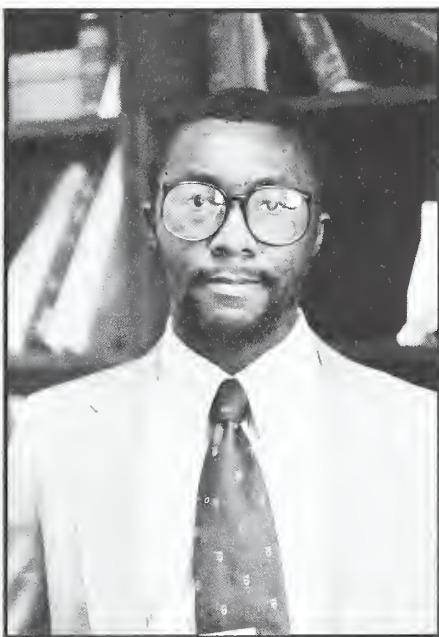
I. Boyce Covington Professor of Law

Professor I. Boyce Covington teaches in the fields of contracts, debtor-creditor relations and commercial transactions. A member of the Wake Forest University law faculty since August of 1977, Professor Covington received his undergraduate degree in psychology from Davidson College in 1964 and earned his J.D. degree from the UNC School of Law in 1969, where he was a member of the Order of the Coif.

Before returning to law school as an instructor, Professor Covington practiced in Pittsboro, N.C., as partner in the firm Barber, Holmes and Covington. In 1971 he became an assistant professor at the University of Georgia and was elected Teacher of the Year in 1973. That year Professor Covington became Associate Professor at the University of Puget Sound and taught there as a full professor from 1975 until 1977 when he joined the Wake Forest University law faculty. Here too, his excellence in teaching was recognized and rewarded with Teacher of the Year in 1979.

Professor Covington has published several articles concerning commercial transactions: *The Implied Warranty of Fitness for Particular Purpose: Some Persistent Problems*, 9 Ga. L. Rev. 149 (1974); *Book Review*, (Gilmore, *The Death of Contract*), 68 L. Lib. J. 108 (1975); *Construction of Contracts and Particular Contract Problems*, NCB Assoc. Institute on Contract Drifting, (1981); *Contracts: Sales and Purchases*, Wake Forest CLE Business Practice Institute, (1981); *Collective Bargaining in American Higher Education: The Immediate Prospects*, 9 Wake Forest L. Rev. 1 (1972).

Professor Covington serves as a council member of the North Carolina Bar Association in the section of Commercial Banking and Business Law. He is also the Academic Director of the BAR/BR1 Bar Review Course and travels throughout the country as a bar review lecturer. Furthermore, he is involved with the Continuing Legal Education of the North Carolina Bar Association and has given presentations on such topics as *Recent Developments in Sales Law, Repossession and Sale in N.C., and Contracts: Sales and Purchases*.



William H. Dowdy

William H. Dowdy Assistant Professor of Law

William H. Dowdy, one of the School of Law's new assistant professors, comes to Wake Forest from the world of criminal litigation. To wit immediately prior to his accepting a position at Wake, Professor Dowdy has been engaged in trial and appellate litigation at the highly-regarded District of Columbia Public Defender Service, where during the course of his professional activities he litigated twenty-one criminal trials. In addition to trial litigation, he briefed several cases for appellate review, and personally argued two of those cases before the District of Columbia Court of Appeals.

Professor Dowdy, who hails from Washington, North Carolina, compiled impressive academic credentials prior to entering criminal practice. As a student at Colgate, his academic prowess was such that he was selected as a junior to participate in the schools political science Washington Study Group, and was selected to participate in the highly-selective New York City Urban Fellowship Program (which was sponsored by former New York Mayor John V. Lindsay) as a senior. Having also been selected as a finalist in the Norman Watson Fellowship Competition, Mr. Dowdy graduated from Colgate, cum laude, in 1973.

Mr. Dowdy's interest in criminal work developed while he was at Stanford Law School, where he was heavily influenced by Anthony Amsterdam and Barbara Babcock Amsterdam, who argued the Jesse Fowler (death penalty) case before the U.S. Supreme Court, and taught the criminal law, criminal procedure, and trial practice courses which Mr. Dowdy took at Stanford. Babcock, Dowdy's first-year small section professor, had been the former Director of the D.C. Public Defender Service, and a pre-eminent criminal trial practitioner in D.C. for several years.

The influence of these teachers was such that Dowdy abandoned any interest in entering the field of business law.

Since graduating from Stanford in 1976, Mr. Dowdy had, in addition to his litigation activities, been engaged in several bar affiliated activities specifically related to criminal litigations. For example, he worked with the Young Lawyers Section of the D.C. Bar in up-dating the Criminal Practice Institutes litigation Manual (1979), and participated in the National Institute for Trial Advocacy (NITA) Program in 1978.

Mr. Dowdy teaches Appellate Advocacy, Criminal Law, and Domestic Relations at Wake Forest.

Joel M. Eichengrun *Assistant Professor of Law*

Professor Joel Eichengrun joined the Wake Forest School of Law faculty in 1979 after seven years in private practice. He received his J.D. degree from Harvard Law School in 1972 and his A.B. in history from Colgate University where he graduated Phi Beta Kappa in 1969.

Upon graduation from law school Professor Eichengrun practiced in Atlanta, for a year where he was an associate with Lipshutz, Macey, Zussman, & Sikes. In 1973 he moved to New York City where he practiced with two Park Avenue firms until 1978. In New York, Professor Eichengrun was involved in general commercial and entertainment litigation, defending celebrities such as Neil Diamond and the Isley Brothers. ABC News and their European anchorman Peter Jennings and ex-Beatle George Harrison contributed glamor and uniqueness to this phase of Professor Eichengrun's legal career.

Since joining the faculty at Wake Forest Professor Eichengrun has taught courses in Real Property, Real Property Securities, Ethics and Remedies. His current research is in the area of environmental and ecology law, with emphasis on rivers and streams in North Carolina.

John M. Fisher *Lecturer in Law*

Mr. John M. Fisher began teaching labor law and equal employment opportunity law at Wake Forest in 1975, four years after joining the R.J. Reynolds Corporation. He graduated from Bucknell University in 1960 and received his law degree from Dickinson in 1963.

Following graduation from law school, Mr. Fisher worked for a couple of years as a trial attorney with the National Labor Relations Board, then as Labor Relations Counsel for Air Reduction Corporation before becoming Director of Industrial Relations with the Dictaphone Corporation. His first position with R.J. Reynolds was as director of labor relations and labor relations counsel for the R.J.R. Foods Division. In 1973 he moved to his present post as Director and special counsel for Employee Relations with R.J. Reynolds Industries, Inc.

Mr. Fisher is a member of both the North Carolina and Pennsylvania Bar. He is also a member of the Labor Law Section of the A.B.A., and the North Carolina Bar Association.

Buddy O.H. Herring II *Associate Professor of Law*

Buddy O. H. Herring joined the Wake Forest law faculty in 1978. He received his J.D. degree cum laude from Wake Forest Law School in 1971, where he served on the Wake Forest Law Review, and won scholastic honors, the Babcock Scholarship, and the Student Advocacy Award. He received his B.A. degree in history from Wake Forest University. He teaches contracts, domestic relations, and wills and administration.

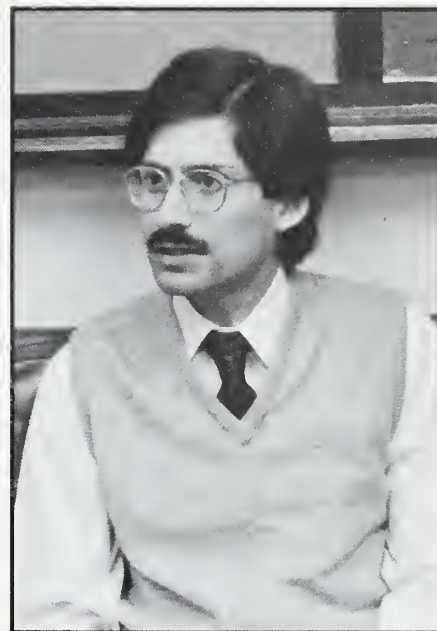
Following graduation from law school, Professor Herring practiced law for two years as an associate with the firm of Koizim and Tirola in Westport, Connecticut. In 1973, he returned to Wake Forest University as its first Placement Director and assumed the position of Assistant Dean. He began teaching in 1975.

Professor Herring is the author of two books: *Real Property Security Cases*, (Wake Forest University School of Law, 1977); *Statutory Supplement. Wills and Administration*, (Wake Forest University School of Law, 1978. Revised 1980). He has written three briefs: *United States v. Hamlin*, 498 F.2d 1398 (4th Cir.), cert. denied, 419 U.S. 1024 (1974); *Wooten v. Shook*, 527 F.2d 976 (4th Cir. 1975); *Orey v. Puckett*, 527 F.2d 976 (4th Cir. 1975). He is the author of three articles: *Self-Incrimination — The Admissibility of Sound Motion Pictures Taken to Show Results of Coordination Tests*, Wake Forest L. Rev. (1970); *Family Law Property Distribution in the 80's*, Trial General Practice Institute, 1981; *North Carolina's Equitable Distribution of Marital Property Law — 1981*, (November-December, 1981). Professor Herring is presently working on a practice manual for N.C. Family Law, to be completed in 1982.

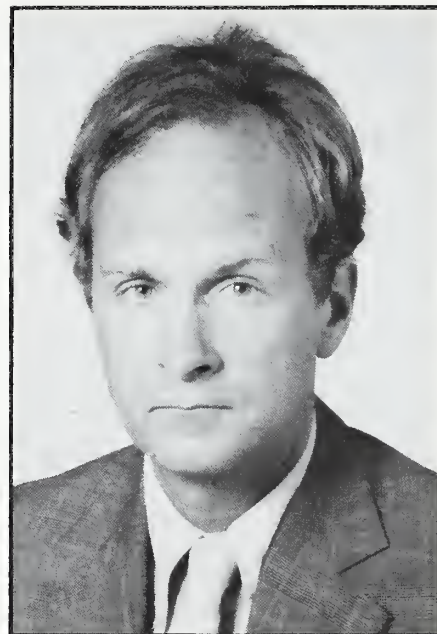
Professor Herring's current research interests center on the Equitable Distribution of Marital Property Act. Presently, he is working on two papers analyzing recent efforts by North Carolina in the area of equitable distribution which will be presented this fall before the Forsyth County Bar Association and the Forsyth County Legal Secretaries' Association.

One of the major student academic opportunities at Wake School of Law is the summer school program in London, England. Professor Herring has been involved in student foreign study and taught Law and Economics in London in the summer of 1980.

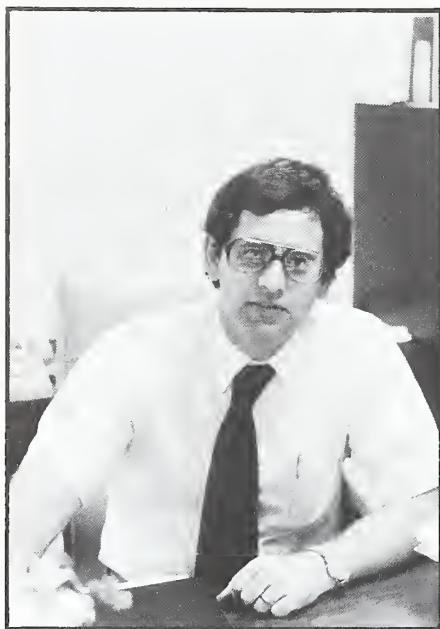
Professor Herring continues to provide leadership in the legal profession. His interests and activities involve him on



Joel M. Eichengrun



John M. Fisher



Buddy O.H. Herring

local, state, and national levels. He has served as a speaker for the Wake Forest School of Law CLE program, and the Forsyth County Bar Association. He also directed the New Placement Offices Workshop for the National Association for Law Placement Convention.

James E. Humphreys *Lecturer in Law*

James E. Humphreys, Jr. first began teaching a Securities Regulations course at Wake Forest University School of Law in 1979. Though he has only taught this course once since then, he feels that the area is growing: "Securities laws have become one of a foundation-type set of laws and any person, not necessarily a practitioner, dealing in the area should be aware of these laws."

In his own practice with the firm of Allman, Spry, Humphreys and Armentrout in Winston-Salem, North Carolina, Mr. Humphreys specializes in the area of securities and business finance.

Mr. Humphreys received his J.D. degree *cum laude* in 1967 from Wake Forest where he was Editor-in-Chief of the Wake Forest Law Review and a member of the Phi Delta Phi legal fraternity. Prior to law school, he served in the United States Army between 1960 and 1964. Mr. Humphreys also holds a B.S. from the United States Military Academy.

Following graduation from law school, Mr. Humphreys joined the firm of Hatfield and Allman in Winston-Salem. His practice branched out into the area of securities laws which he continued with the firm of Allman, Humphreys and Armentrout in 1980 and with his present firm which was formed in 1981.

Mr. Humphreys is involved in a myriad of activities within the legal profession. He co-authored an article entitled *Motions and Pleadings Under New Civil Procedure*, 5 Wake Forest L. Rev. 70 (1969); served as an Executive Council member of the Young Lawyers Section of the North Carolina Bar Association from 1970-72; and lectured for the North Carolina Bar Association in their practical skills course. Furthermore, since 1976 Mr. Humphreys has been an American Bar Association member of both the Corporate-Shareholder Relations Committee (Banking and Corporation Section), and the Non-Profit Corporation Committee (Taxation Section).

In addition to his securities regulations course, Mr. Humphreys has been a lecturer in Bankruptcy Law since 1973 and an

adjunct professor at the Babcock School of Management.

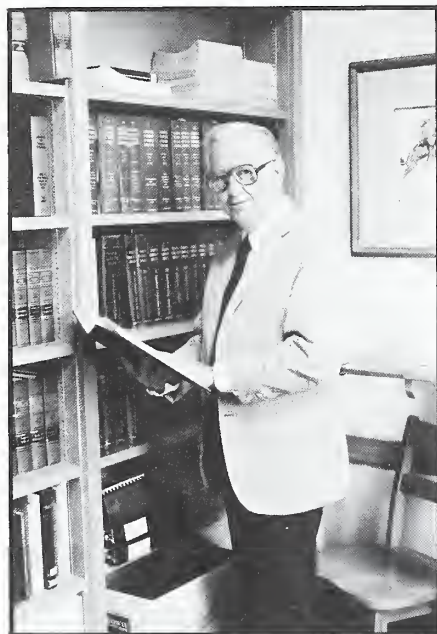
H.C. Lauerman *Professor of Law*

Professor Lauerman has been a member of the Wake Forest law faculty since 1963. He received his J.D. (1948) and L.L.M. (1958) degrees from Georgetown University School of Law, where he was editor-in-chief of the Georgetown Law Journal (1947-1948). He received his B.S. from the U.S. Naval Academy (1938) and was a Graduate Fellow at Duke University (1962-1963). Professor Lauerman is currently teaching Torts, Labor Law, Products Liability, and Remedies.

Upon graduation from the Naval Academy, Lauerman served in the U.S. Navy until 1962, when he retired with the rank of Captain. While serving with the Navy, he worked as a Claims Attorney in the office of the Judge Advocate General of the Navy (1945-1947), as Admiralty Attorney (1947-1948), Legislative Attorney (1950-1952), Congressional Investigations Counsel, Navy Department (1957-1959), Legal Officer, Military Sea Transportation Service (1956), and Head Consultant, NATO Atlantic Command on Foreign Military Assistance Programs (1959-1960). He also served on the Navy Board of Review (1952-1954).

Professor Lauerman's interests include a study of compensation for accident victims. He has been a member of the Winston-Salem/Forsyth County Board of Education and is currently a board member of the Winston-Salem Alcoholic Beverage Control Board. Lauerman is a CLE writer and lecturer on torts, specifically on professional malpractice and products liability. He has been a member of the drafting committees of the North Carolina General Statutes Commission. He is also a member of the Scribes Legal Writing Group.

Professor Lauerman has published several articles in the Wake Forest and University of North Carolina law reviews: *Constructive Trusts and Restitutionary Liens in North Carolina*, 45 N.C. L. Rev. 424 (1967); *Book Review*, (John K. Galbraith, *The New Industrial State*), 5 Wake Forest Int. L. Rev. 390 (1969); *The 1969 Amendments to the North Carolina Wrongful Death Statute*, 6 Wake Forest Int. L. Rev. 211 (1970); and *The Accrual and Limitation of Causes of Action for Nonapparent Bodily Harm and Physical Defects in Property in North Carolina*, 8 Wake Forest L. Rev. 327 (1972). He has written a book



H.C. Lauerman

review on *The Role of Domestic Courts in the International Legal Order*, by Richard A. Falk, 19 Jour. of Leg. Ed. 242 (1966). Lauerman has also written for the N.C. Bar Association: *Negotiating the Collective Bargaining Agreement*, Institute on Labor Relations, N.C. Bar Association Foundation, Chapter 1 (1971); and *Proof of Negligence in Motor Vehicle Collision Cases*, Institute on Recent Developments in Tort Law, N.C. Bar Association., Chapter 2 (1967). He also wrote *Man's Right to a Just Government and His Right to Disobey It to Human Rights* (Amintaphil 1, Pollack ed. 1971).

His publications for the Wake Forest Continuing Legal Education program include: *Products Liability: Proof of the Prima Facie Case in North Carolina*, Product Liability Institute of CLE Program, Wake Forest University (1980); and *Selecting the forum for Trial of a Product Liability Action*, Product Liability Institute of CLE Program, Wake Forest University (1980). Professor Lauerman is currently developing an article on the evolving law of professional malpractice in North Carolina.

David A. Logan *Assistant Professor of Law*

David Logan joined the Wake Forest law faculty in 1981. He received his J.D. from the University of Virginia Law School in 1977, where he was a member of the Raven Society, chairman of the Moot Court Board, and a Hardy C. Dillard Fellow. He earned his M.A. in political science at the University of Wisconsin in 1972 and received his B.A. in political science from Bucknell University in 1971. Professor Logan is currently teaching Torts, Legal Bibliography, and Ethics at Wake Forest.

Professor Logan served as a specialist in American Government for the Congressional Research Service, Library of Congress, during 1973 and 1974. Following graduation from law school, he was a law clerk to the Honorable Albert V. Bryan, Jr., U.S. District Court, Fourth Eastern District of Virginia until 1978. He then joined the Washington, D.C. law firm of Fried, Frank, Harris, Shriver & Kampelman as an associate and continued with them until joining the School of Law faculty.

During his undergraduate and graduate studies, Professor Logan was active in varsity basketball and student government. He was on the board of directors for the campus radio station, founded the local Environmental Action Group, and was a

member of Pi Sigma Alpha, the political science honorary society publications *From Grant to Truman: Historical Uses of Special Prosecutors* (Library of Congress Monograph 1973).

Joel S. Newman *Associate Professor of Law*

Joel S. Newman joined the Wake Forest law faculty in 1978. He received his J.D. degree in 1971 from the University of Chicago Law School where he graduated in the top quarter of his class. Professor Newman received his B.A. cum laude from Brown University in 1968. He teaches in the areas of tax, corporations, and ethics.

After graduating from law school, Professor Newman worked as an associate with the firm of Shearman and Sterling in New York (1971-1973) and then with Fredrikson, Byron, Colborn, Bisbee and Hansen of Minneapolis, Minnesota (1973-1976).

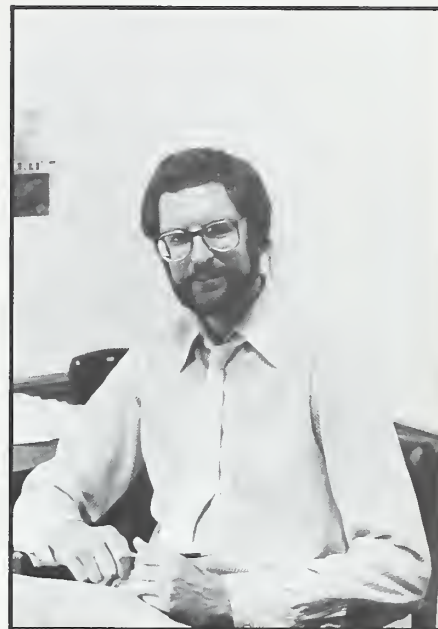
Professor Newman has a special interest in the areas of personal income tax and estate and gift tax. Several articles written by Professor Newman in this area have been published. Most recently *The Medical Expense Deduction: A Preliminary Postmortem*, appeared in *Southern California Law Review*, 53 Sou. Cal. Law Rev. 787, 1980. *Fordham Law Review*, published *The Inequitable Tax Treatment of Expenses Incident to Charitable Service*, 47 For. Law Rev. 139, (1978).

Additional published articles include *Of Time and Up the River: Criminal Restitution and the Annual Accounting System*, 56 Taxes 420 (1978) and *Discharges Of Legal Obligations, Section 2036 and Consideration in Estate and Gift Taxation*, 35 Wash. and Lee L. Rev. 107 (1978).

In addition, two articles are scheduled for publication: *Transferability, Utility, and Taxation*, will appear in *Kansas Law Review*, and *The Lawyer and the Immoral Client: The Problem of the Lifeboat*, in Case and Comment.

In addition to published articles, Professor Newman has presented papers in several symposiums. At Wake Forest Professor Newman presented a paper on *The Lawyer and the Immoral Client*. In 1979 he presented a paper entitled *Powers of Appointment: General Considerations* at the Third Annual Wake Forest Estate Planning Seminar. Scheduled for presentation in December of 1981 is a paper entitled *Increasing After Tax Recoveries for Individual and Business Injuries*.

With an interest in the protection of personal liberties, Professor Newman has



David Logan



Joel S. Newman



Malcolm E. Osborn

served on the Board of Directors of Winston-Salem's chapter of the North Carolina Civil Liberties Union. (President, 1978-1980). Also, in the summer of 1980, Professor Newman attended a N.E.H. Seminar on Liberty, Equality and Social Utility at Tufts University.

Malcolm E. Osborn *Adjunct Professor of Law*

An adjunct professor at Wake Forest since 1974, Malcolm C. Osborn teaches Tax Procedure and Taxation of Partnerships. He has also taught Taxation and Business Law at Winston-Salem State University (1976-1981).

He has been an evening instructor in Federal Taxation and Business Law, Guilford College, N.C. (1965-68) and Insurance, High Point College, N.C. (1965). He was Adjunct Professor at the University of North Carolina at Greensboro, Graduate School of Business and Economics, in Federal Tax, Insurance, and Business Law (1968-76).

Mr. Osborn, who is a shareholder in the law firm of House, Blanco, Randolph & Osborn, P.A. was for 17 years Vice-President and General Tax Counsel of Integon Corporation and its affiliated group companies, Winston-Salem, N.C. (1964-June 1981).

A prolific writer and frequent speaker on tax law, Mr. Osborn has many published works to his credit. He has contributed to the *Journal of Taxation*, *Taxation for Accountants*, the *Boston University Law Review*, the *Wake Forest Law Review*, *TRIAL National News Magazine*, *The CLU Journal*, *Tax Management International Journal*, *National News Weekly*, and *International Bar Journal*. The New York University Proceedings of the 24th, 26th, 32nd, and 39 Annual Institutes on Federal Taxation and American Business Law Association National Proceedings (1977) and the Association of Life Insurance Counsel Proceeding (1966) have featured Mr. Osborn as speaker.

He has been Committee Editor of Important Developments, *The Tax Lawyer* (the Journal of the Section of Taxation), ABA (1974-76), and Subcommittee Chairman (1967-77) and Vice Chairman (1978-present), ABA Section of Taxation, Committee on Insurance Companies; and Chairman, American Business Law Association Committee on Federal Taxation (1972-80). Mr. Osborn is presently chairman of The Committee on Insurance Companies of the American Bar Association's

Section of Taxation, serving his second year of a two-year term.

Mr. Osborn was born and raised in Lincoln, Maine. He received his B.A. from the University of Maine in 1952; his J.D. from Boston University School of Law in 1956; and his LL.M. in Taxation from Boston University School of Law, Graduate Tax Program, in 1961. He is a member of the Massachusetts, Maine, North Carolina, and Federal Bars.

J. Wilson Parker *Assistant Professor of Law*

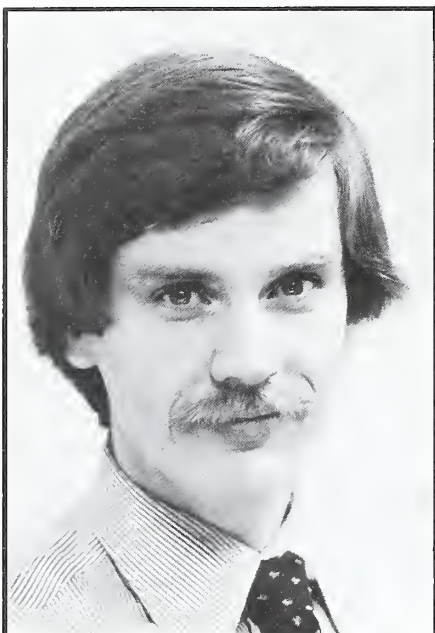
Professor J. Wilson Parker teaches in the areas of legal bibliography and employment discrimination. Starting the spring semester of the 1981-82 academic year, he will begin teaching trial practice and environmental law.

A first-year member of the Wake Forest University law school faculty, Professor Parker received his B.A. in American Studies from Yale (1974) and his J.D. from Duke (1977). His activities in law school included membership on the Duke Moot Court Board, participation on a team in the William and Mary Moot Court Competition, volunteer work with the Durham County Legal Aid Society, and research assistant to Professor Betsy Levine. As a research assistant, he helped in the preparation of Vol. 39, *Law and Contemporary Problems* (1975) which focused on the use of social science data in litigation.

Following graduation from law school, Professor Parker joined the firm of Pfefferkorn & Cooley, P.A. located in Winston-Salem, North Carolina where he was a trial lawyer. The majority of his practice was in civil litigation with emphasis on employment, administrative and family law. He also practiced extensively in the federal court.

Professor Parker is a member of the North Carolina Academy of Trial Lawyers, the North Carolina Bar Association and the Forsyth County Juvenile Justice Council. In addition, he chaired the Advisory Board of Youth and Family Support Project between 1977 and 1980. One interesting activity of Professor Parker's that is particularly noteworthy is his earlier service as the Criminal Justice Coordinator for the Georgia Narcotics Treatment Program in 1972.

Professor Parker's current legal interests focus on the areas of employment law, specifically the area of public employment, and the theories of persuasion in trial practice here in North Carolina.



J. Wilson Parker

Ralph A. Peeples

Assistant Professor of Law

An understatement of fact is to say that Professor Ralph Peeples' educational background is impressive. He graduated *cum laude* from Davidson College in 1973 with a B.A. in English and received his J.D. from New York University School of Law in 1976. While attending law school, he held a Root-Tilden Scholarship, an award which is based on both academic ability and potential for public service. Professor Peeples also served as a staff member and a Book Review Editor for the New York University Review of Law and Social Change.

Prior to his position at Wake Forest, Professor Peeples worked for Squire, Sanders and Dempsey, in Cleveland, Ohio, as an associate attorney. In 1979, he joined the Wake Forest University School of Law faculty where he currently teaches Corporations, Debtor-Creditor Rights, Real Property and Suretyship and Municipal Corporations. In 1981, Professor Peeples was selected to receive the *Jurist* Excellence in Teaching Award by the third year students.

Professor Peeples' credentials also include lecturing for both the Continuing Legal Education program on bankruptcy and the North Carolina Bar Association's Bar Review course on mortgages and suretyship. His present research on North Carolina's new debtor exemption law will provide material for an article to be published in 1982.

Suzanne Reynolds

Assistant Professor of Law

Suzanne Reynolds joined the Wake Forest faculty in September. Her course assignments for this academic year include Legal Bibliography, Professional Responsibility, Business Organizations, and Real Property Security and Suretyship.

Among other things, Professor Reynolds' literary successes recommend her highly. For instance, a *summa cum laude* graduate of Meredith College (1971), she also holds an M.A. in English from the University of North Carolina at Chapel Hill, awarded following the completion of a thesis on Emily Dickinson (1976). While at Meredith she was the recipient of the Ruth Hubbell Creative Writing Award. An honors graduate of Wake Forest School of Law, Professor Reynolds was a member of the staff of the Law Review (1975-1976), serving as Notes and Comments Editor her third

year. Also, in 1975-1976 she was awarded the James F. Hoge Memorial Prize for the Best Student Writing in the Law Review. She authored *Privacy: The Search For a Standard*, 11 Wake Forest L. Rev. 659 (1975), and co-authored *Taxpayer's Actions: Public Invocation of the Judiciary*, 13 Wake Forest L. Rev. 397 (1977).

In addition to her writing accomplishments, Professor Reynolds has achieved other notable scholastic successes. She graduated first in her class at Meredith. While attending Wake Forest Law School she was the recipient of both the Wake Forest Full Tuition Scholarship and the Guy T. Carswell Scholarship. She won the American Jurisprudence award for Criminal Law and Procedure and the American Jurisprudence Award for Conflict of Laws.

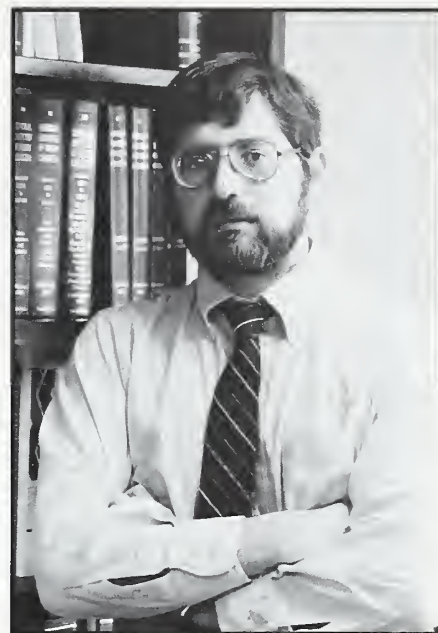
Prior to entering law school Professor Reynolds served as Public Relations Director for Granville County Schools (1971-1972). She returned to her alma mater as Information Specialist at Meredith College (1972), Director of Foundations and Editor of the alumnae magazine. Her work there concentrated on the writing of grants for the college.

Upon graduation from law school in 1977, Professor Reynolds joined the law firm of Smith, Moore, Smith, Schell and Hunter. She practiced in general litigation during her four years there with an emphasis on business and real property litigation.

Professor Reynolds' professional associations include the American Bar Association, North Carolina Bar Association, Forsyth Bar Association, North Carolina Association of Women Attorneys, and North Carolina Civil Liberties Union. Her pro bono work with the N.C.C.L.U. and other organizations has focused on parental and children's rights.

In addition to these professional commitments, Professor Reynolds was an active member of the Greensboro community before moving to Winston-Salem in the fall. She served as leader of the lawyers division in the campaign for the Greensboro United Arts Council Fund Drive and as a volunteer for Youth in the Law in the Greensboro Public Schools.

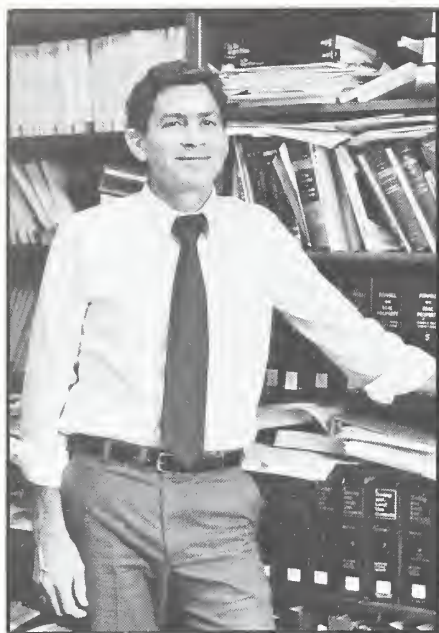
With apparent enthusiasm Professor Reynolds embraces another professional challenge. Her record suggests a continuation of achievements that have marked her career thus far.



Ralph Peeples



Suzanne Reynolds



Thomas E. Roberts

Patricia J. Roberts *Assistant Professor of Law*

Professor Roberts received her B.A. in mathematics from Ohio State University in 1968, and her J.D. summa cum laude from the Ohio State University College of Law in 1975. Professor Roberts is a member of the Ohio State Bar.

Before attending law school Professor Roberts worked as a statistician for the Ohio Adult Parole Authority and the Bureau of Vocational Rehabilitation. Later she worked as an investigator for the Ohio Civil Rights Commission. During law school, Professor Roberts worked as a clerk for Wright, Harlor, Morris and Arnold of Columbus, Ohio.

In 1979, Professor Roberts came to Wake Forest as an adjunct professor. She became an assistant professor-parttime in 1980. Professor Roberts teaches Torts and Future Interests.



Patricia J. Roberts

Thomas E. Roberts *Associate Professor of Law*

Tom Roberts joined the School of Law's faculty in the fall of 1977 as an assistant professor of law, bringing with him an impressive educational background. Professor Roberts currently teaches Property, Land Use Regulation and Planning, and Conflict of Laws.

In 1966, Professor Roberts received his B.A. from Hanover College in Indiana. He graduated *cum laude* from Ohio State University School of Law in 1971. While working for his J.D., Professor Roberts served as Articles Editor for the Ohio State Law Journal and was awarded the Order of the Coif.

Before his arrival at Wake Forest, Professor Roberts worked as a litigator for Porter, Stanley, Platt and Arthur, an Ohio-based firm. He also held posts as Supervising Attorney and Adjunct Professor for Ohio State's Law School Clinical Program from 1975-1977.

Professor Roberts is presently working on an article dealing with the regulation of home occupation of zoning ordinances.

Professor Roberts has had the opportunity to pursue his interest in land use and zoning problems through his participation in the Continuing Legal Education program

Charles P. Rose Jr. *Professor of Law*

Professor Charles P. Rose received his J.D. from Case Western University School of Law. He was a member of Law Review and had two notes and one recent decision published. He received both the Archibald Hall Throckmorton Award and American Jurisprudence Award in Constitutional Law. Mr. Rose is a member of the Phi Alpha Delta Law Fraternity and received Alumni scholarships throughout his legal education. In 1980 he received his L.L.M. from the University of Michigan. His focus of study was criminal law and remedies.

During the summer of 1966 Professor Rose participated in the legal intern program with the Internal Revenue Service, Regional Counsel. After graduation from law school (1967) he spent a brief time as a staff attorney with the Legal Aid Society in Cleveland, Ohio where his practice involved handling motions in the areas of domestic relations, landlord tenant and debtor creditor. As a United States Army staff attorney (1968-69) he instructed in the area of

Military Justice at the United States Infantry Division and was involved in trial work as a prosecutor and a defense counsel. Then from 1970-72, he was an instructor for the Judge Advocate General's School, Criminal Law Division.

Professor Rose was an assistant professor of law at the University of Akron School of Law for a year before he joined the faculty of Wake Forest in 1974. His areas of instruction at Wake Forest include Administrative Law, Criminal Law, Evidence, Legal Bibliography, Remedies and Trial Practice. His current legal interests are in the fields of criminal law and criminal procedure. Professor Rose teaches the North Carolina Bar Review course of Criminal Law.

Professor Rose received his AB degree in history from the College of William & Mary in June 1964. He is a member of the Florida Bar, Ohio Bar and the United States Court of Military Appeals.

David F. Shores *Professor of Law*

A specialist in the fields of taxation and antitrust, Professor David Shores' current research interests focus on recent Supreme Court decisions involving Commerce Clause limitations on the power of the states to tax interstate commerce. He has just completed a manuscript entitled *Justice Black and Antitrust* which will be published in the spring 1982 issue of *Antitrust Bulletin*. Previously published law review articles authored by Professor Shores include a study of professional corporations and the admissibility of prior judgments under Section 5 of the Clayton Act as well as a re-examination of the relationship between capital gain and the assignment of income.

Professor Shores became a member of the Wake Forest teaching staff in 1972. Graduating with distinction from the University of Iowa College of Law in 1967 where he was a member of the Law Review Board of Editors, he went on to Georgetown to acquire his LL.M. in taxation in 1969. His professional experience before arriving at Carswell Hall involved two years as a trial attorney with the Federal Trade Commission in Washington. Leaving government for private practice, Professor Shores joined the Columbus, Ohio firm of Porter, Stanley, Pratt and Arthur as an associate from 1969 to 1972. During the 1981 academic year Professor Shores divided his teaching responsibilities between Wake Forest and the University of Missouri-Columbia Law School where he was

a visiting professor during the spring and summer sessions.

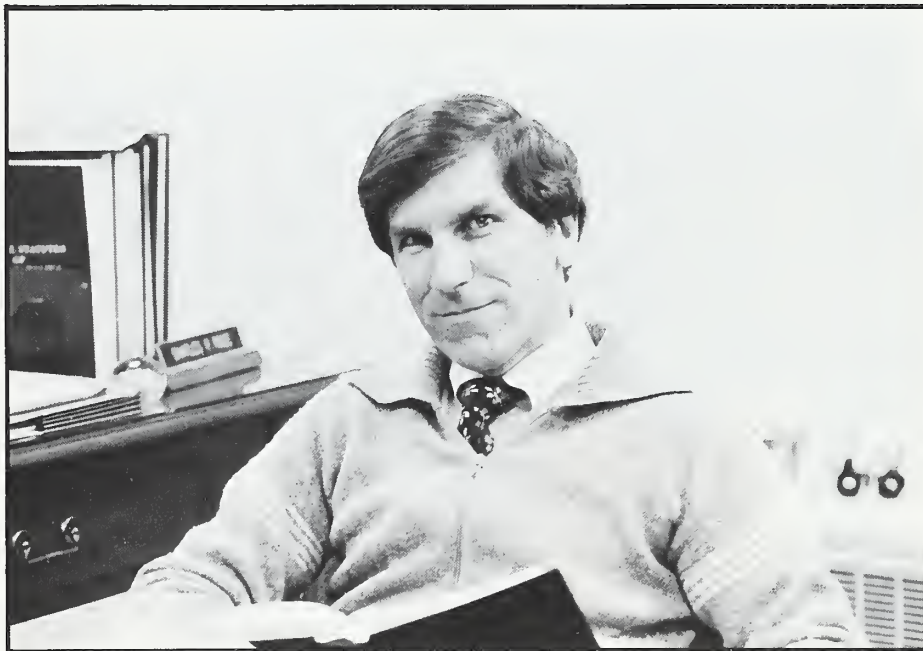
Away from the classroom, Professor Shores maintains a high degree of involvement with the legal profession. As a result of his participation in the North Carolina Bar Association CLE Program, he has presented several papers concerning his areas of expertise in 1974, 1976, and 1980.

James E. Sizemore *Professor of Law*

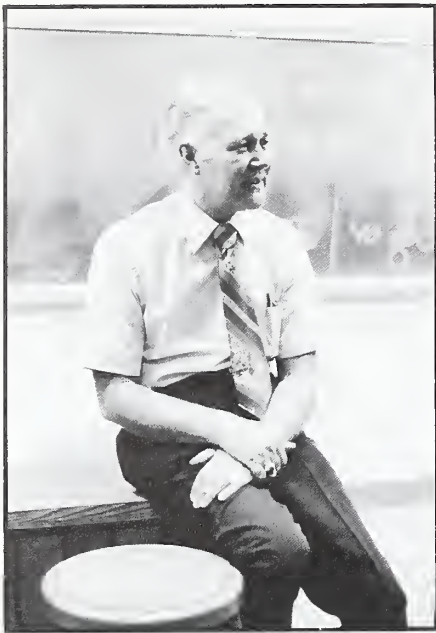
Professor James E. Sizemore is a recognized authority on N.C. procedure and has been prominent as a draftsman of N.C. statutes. He was draftsman of N.C. Pattern Jury Instructions in two volumes: *N.C.P.I.: Motor Vehicle Negligence* (1973) and *N.C.P.I.: Civil Cases* (1975). From 1953-1955 Professor Sizemore was a member of



David F. Shores



Charles P. Rose Jr.



James E. Sizemore

the General Statutes Commission and currently holds that position drafting and recommending legislation to the N.C. General Assembly. From 1956-1969 he participated as a member of the Drafting Committee of New Rules of Civil Procedure.

Professor Sizemore is actively involved in many facets of the CLE programs for both Wake Forest and the North Carolina Bar Association. He has had various articles published by Wake Forest CLE and has participated in many Civil Procedure, Evidence and Medico-Legal CLE programs for the past 28 years. For the past two years he has been a member of the CLE team for Annual Review for N.C. Lawyers. The program is presented in four different cities to review the legal developments of the last year. The 150-200 page manuscript required to be written by each participant for each review is published by Wake Forest CLE. He received the award for service as a Continuing Legal Education lecturer, N.C. Bar Association, 1975.

Professor James E. Sizemore joined the Wake Forest University School of Law in September 1953. He received his (J.D.) L.L.B. degree cum laude from Wake Forest University in 1952 and an L.L.M. degree in 1966 from New York University School of Law. In 1951 he received a B.S. degree in history and Spanish from East Tennessee State University, where he was a Varsity Championship Debator and won a certificate for winning twenty-six consecutive debates against other colleges and universities. He teaches at the School of Law in the areas of civil procedure, evidence and law and forensic medicine. He has also taught Introduction to Procedure, Remedies, Insurance and Trial Court.

While in law school Professor Sizemore was a Dean's List Student and a member of the National Moot Court Team. He also won the American Trust Co. Student Will Drafting Contest. After graduation from Wake Forest he was hired as an Associate with the North Carolina firm of Hamrick and Jones in Rutherfordton. Since 1953 Professor Sizemore has been a faculty advisor to the Phi Alpha Delta, Timberlake Chapter and a faculty advisor to pre-law students at Wake Forest.

Professor Sizemore is a member of Bar-Bri Bar Review Faculty and a member of American Institute of Savings & Loan Associations' faculty (1972-1979). From 1958-1963, 1972-1979, he was a lecturer on Medical Jurisprudence at Bowman Gray School of Medicine. In 1970 he was elected Vice President of the North Carolina Bar Association.

Among his numerous publications since

1963 are *Book Review*, 15 J. Legal Ed. 336 (1963); *General Scope and Philosophy of the New Rules*, 5 W.F.L. Rev. 1 (1969); *Character Evidence in Criminal Cases in North Carolina*, 7 W.F.L. Rev. 17 (1970); and *Dedication*, *Carroll W. Weathers*, 8 W.F.L. Rev. #2 (1972). He has also had two articles published in the Wake Forest Jurist; *Dedication*, *James A. Webster Jr.*, 9 Jurist #1, p.2 (1978) and *Dedication*, *Hugh W. Divine*, 9 Jurist #2, p.2 (1979).

Gary S. Smithwick *Lecturer in Law*

Professor Gary Smithwick's "nuts-and-bolts" approach to his administrative law course reflects his own practice in the area of federal communications. He has written such articles as an operations code in compliance with the Federal Communications regulations for Billboard Broadcasting Corp. and an expose on the use of scriptures to pass betting numbers for the International Radio Report. Recognized in this area of federal communications law, Professor Smithwick has spoken regularly at the Billboard International Radio Programming Forum and on the topic of equal employment opportunities at the National Radio Broadcasting Association meeting.

Professor Smithwick received his J.D. degree from Wake Forest University School of Law in 1971. He graduated from North Carolina State in 1968 with a B.S. in English. During both undergraduate and law school, he worked full time at several radio stations including WSJS in Winston-Salem.

Following graduation, Professor Smithwick worked with the Federal Communications Commission in Washington, D.C. from 1971 until 1975. In 1975, he came back to Winston-Salem and opened a private practice specializing in the area of radio and television broadcasting. Presently, he is a partner in the firm of Keith and Smithwick which was formed in 1980.

Professor Smithwick began his teaching career at the law school in 1977. In addition to his administrative law course, Professor Smithwick has found time to serve on the Federal Communications Bar Association's Deregulation Committee and Vice President of the Consolidated Broadcasting Corporation.

Brent R. Taylor *Assistant Professor of Law*

Professor Brent R. Taylor joined the Wake Forest law faculty in May, 1981. He received his B.A. degree in history from the University of Cincinnati in 1971, and his J.D. degree in 1975 from the University of Toledo, where he was associate editor of the Toledo Law Review and active in the Civil Law Clinic. In 1980, Professor Taylor received his LL.M. degree from Duke University. He teaches Interviewing, Negotiation and Counseling in the spring and directs the Legal Services Clinic during the academic year.

Following graduation from law school, Professor Taylor served as a staff attorney for Legal Aid Societies in Birmingham, Alabama, and Cincinnati, Ohio. In 1978, he returned to academia as a John S. Bradway Teaching fellow at Duke, and after receiving his LL.M. degree, taught at the University of South Carolina School of Law in 1980-81.

Having served as a Training consultant for Legal Services programs, Professor Taylor brings much experience to Wake Forest in the legal services field. He has worked with the Legal Services Corporations of Alabama and North Carolina, and also with the Office Of Kentucky Legal Services Programs. Professor Taylor is involved in the Trial Advocacy and Clinical Teaching Sections of the Association of American Law Schools, and is a member of the teaching team of the Southeast Clinical Teachers Conference. He is also active in the National Institute of Trial Institute. Professor Taylor's interest in trial work is reflected in an article entitled *Hearsay Treatment of a Witness' Prior Statement Under Federal Rule of Evidence 801*, which will be published in Temple Law Quarterly in 1982.

Charles H. Taylor *Adjunct Professor of Law*

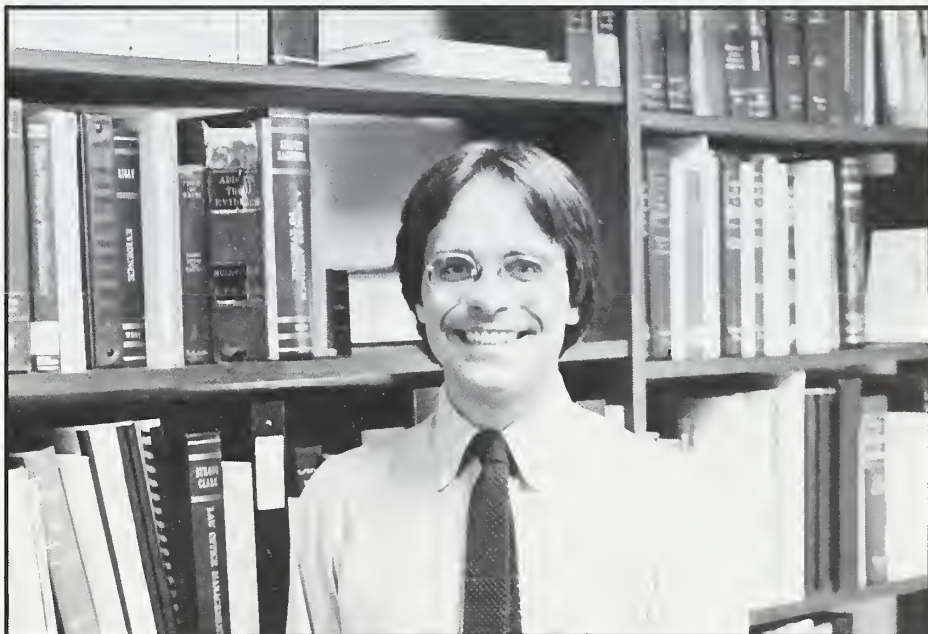
Charles H. Taylor joined the faculty of Wake Forest University School of Law in 1976. He received both his J.D. and undergraduate degrees cum laude from Wake Forest. Wake's successful CLE program speaks of Mr. Taylor's activities.

Mr Taylor is well qualified for the position of CLE director. In his twenty-six years between being a student and being a professor, he had a varied career. During this time when he was in government and private service, he was a criminal court judge, as well as trial attorney and senior partner in a thirty-eight attorney firm. Mr. Taylor was professionally involved with Jack Anderson (the columnist), Werner Von Braun (the missile man), F. Lee Bailey (the lawyer), and the My Lai Trials. In his career, he tried hundreds of felony cases.

Charles Taylor is a member of both the



Charles H. Taylor



Brent R. Taylor



Charles S. Telly

Forsyth County and North Carolina Bar Associations. He is a member of the North Carolina State Bar Certification, Accreditation, Specialization, and Education Committee. He is also a member of the American and North Carolina Academies of Trial Lawyers, and is a faculty member of the American Academy.

In his career at Wake Forest law school, Mr. Taylor has taught Appellate Practice, Legal Research and Writing, Trial Practice, and is Director of the CLE program. He worked with both the Trial and Appellate student school competition teams. This 1976-1981 period is marked with good student success and recognition. He has been editor of several CLE publications, including *N.C. Family Law*, *Business Practice*, and *Tort Handbook*.

Under Professor Taylor's administration Wake Forest has developed a strong CLE program in North Carolina.

Charles S. Telly ***Visiting Associate*** ***Professor of Law***

Charles S. Telly joined the School of Law faculty as Visiting Associate Professor in the fall of 1979. He is currently teaching Agency and Partnership and a Seminar: The Corporation in Modern Society.

Professor Telly earned his B.A. degree from Williams College and his J.D. from the University of Buffalo. He earned his M.A. from the University of Arizona where he graduated first in his class in the Graduate School of Philosophy. He earned his Ph.D. degree in Business Administration from the University of Washington where he also graduated first in his class. Professor Telly completed his LL.M. degree at Columbia University School of Law where he was a John Jay Fellow. He will complete his J.S.D. degree from Columbia University School of Law in June 1982.

Professor Telly is the author of numerous books and articles on law and economics, business law and legal history. His most recent articles include *The Municipal Utility and the Liberal Economic Ethic* (co-authored with Jack F. Grove), 30 Case W. Res. L. Rev. 267 (1980), *The Classical Economic Model and the Nature of Property in the Eighteenth and Nineteenth Centuries*, 13 U. of Tulsa L.J. 406 (1978), *The Life of the Law—An Ideal*, 27 Dayton B.A.J., 9 March 1977).

He has written two books, *Organization Theory*, (1972) and *The American Free Enterprise System—A Legal and Economic Analysis*, (1971). *A Primary Introduction to the Law* will be published by Winthrop

Publishers, Inc., in 1982.

Professor Telly has had considerable teaching experiences in law and business. He has taught law school courses at the Universities of Dayton, Utah and New Mexico and in the business colleges of the Universities of Utah, New Mexico, Washington, Arizona and Jamestown Community College, State University of New York.

He has traveled extensively in Europe with special interest in Southeast Europe especially Albania and Yugoslavia. He speaks fluent Albania. He also has teaching experience in Germany and England.

His professional experiences include being a consultant, researcher, expert witness, legal counsel and the private practice of law. He has also presented several papers at national and regional professional meetings.

His academic excellence is demonstrated by the numerous awards and honors he has received in both his academic and professional careers.

Richard Tyndall

Lecturer in Law

As have several other members of the faculty of the Wake Forest School of Law, Mr. Richard Tyndall returned to his alma mater as an instructor. Mr. Tyndall, who teaches insurance law, has been a regular among the several members of the practicing Bar of Forsyth County who spend one or two evenings on campus a week as visiting professors. A 1965 cum laude graduate of Wake Forest Law School, Mr. Tyndall practices in Winston-Salem as a member of the firm of Hutchins, Tyndall, Doughton & Moore.

Admitted to the North Carolina Bar Association in 1965, Mr. Tyndall is an active member. In 1975, he served as President of the Forsyth County Bar Association and from 1977-1980 he was a member of the Board of Governors of the North Carolina Bar Association.

In addition to continuous membership in these organizations, Mr. Tyndall is active as member of the International Association of Insurance Counsel and the North Carolina Association of Defense Attorneys; he is chairman of the Committee on Judicial Conference Liason. Between 1973 and 1975, he served on the Appellate Rules Study Committee.



Richard Tyndall



George K. Walker

George K. Walker *Professor of Law*

A native of Alabama, Professor George K. Walker graduated from its university in 1959 with a B.A. in history. After serving three years in the U.S. Navy's Atlantic Fleet destroyer forces as a chief engineer, he entered Vanderbilt law school, completing his studies in 1966. In addition to an LL.B., Professor Walker has received an M.A. in history from Duke, where he was a Woodrow Wilson Fellow (1968).

After further legal study at the University of Virginia, where he received an LL.M. (1972), Professor Walker joined the faculty at Wake Forest School of Law. His teaching assignments this year included Civil Procedure I and II, Federal Jurisdiction and International Law. He teaches Admiralty in alternate fall semesters.

An inveterate student of the law and an equally dedicated teacher of students, Professor Walker balances this duality with skill and professional dedication. For instance, he is currently working on his dissertation for the J.S.D. degree at Yale Law School. His current academic interests include contributions to the law school's CLE institutes and handbooks, work on a revised set of local rules for federal district court, and consulting and writing for the Naval War College, Newport, Rhode Island. He recently published a commentary on the 1980 changes in the Federal Rules of Civil Procedure for the *Wake Forest Law Review*, and his article on the federal model student practice rule appeared in the *Washington and Lee Law Review*. The 1980 changes in Federal Rules of Civil Procedure were subject of the recent commentary—*The 1980 Amendments to the Federal Rules of Civil Procedure and Proposals for North Carolina Practice*, 16 *Wake Forest L. Rev.* 915, (1980). In the same year, *Washington and Lee Law Review* published his article on the federal model student practice rule: *A Model Student Practice Rule for the United States Courts*, 27 *Wash. & Lee L. Rev.* 1101 (1980).

Representative among his other published writings is *Sea Power and the Law of the Sea: The Need for a Contextual Approach*, 7 *Ocean Devel. and Int'l. L.* 299 (1979).

Professor Walker is very active in an advisory capacity with the appellate advocacy teams which the School of Law fields in regional and national competition. He was instrumental in organizing and supervising the Moot Court Board in this connection from 1972 through 1977 and has

personally supervised several teams in cases argued before the U.S. Ct. of Appeals for the Fourth Circuit, U.S.N. Ct. Mil. Rev. (1973-date).

Consultation with U.S. Naval War College on resident, correspondence curricula in international law (1976), an advisory relationship with U.S.N.J.A.G. on law of armed conflict matters, and involvement in local rules revision (1981-date) suggests representatively the many facets of Professor Walker's continuing contributions to the legal profession.

Professor Walker will be his church's delegate to the annual convention of the Episcopal Diocese of N.C. at Wake Forest University January 29-30, 1982.

Samuel G. Wellman *Lecturer in Law*

Samuel G. Wellman came to Wake Forest School of Law in August, 1978 to provide legal assistance to students as the Lawyer-in-Residence, a guidance program initiated that year.

Mr. Wellman received his J.D. from the University of Michigan Law School in 1934, where he was student editor of the *Michigan Law Review* and President of the *Barristers Society*. His A.B. was from the University of Michigan where he graduated with honors.

Mr. Wellman was an associate and partner with the firm of Hahn, Loeser, Freeheim, Dean and Wellman in Cleveland. His experience includes real property law, anti-trust law, real property taxation, estate planning, corporate law, and general counseling. He served a three year term as trustee for the Greater Cleveland Bar Association, following service for the Association on its Unauthorized Practice of Law Committee.

Before coming to Wake Forest, Mr. Wellman had retired from active practice. His first assignments as a teaching member of staff was in Legal Bibliography in academic year 1980-1981. This year he serves the dual role of Lawyer-in-Residence and instructor of Legal Bibliography.

Mr. Wellman is a member of the American, Ohio State, Greater Cleveland, North Carolina and Forsyth County Bar Associations and is admitted to practice in Ohio and North Carolina. He is a member of Phi Sigma Kappa and Phi Alpha Delta.



Samuel G. Wellman

R. Michael Wells *Lecturer in Law*

R. Michael Wells is a native of Charleston, W. Va.; he graduated from the University of Virginia in 1971 and received his law degree from Wake Forest in 1976. The year following graduation from law school he spent as research assistant to the Honorable I. Beverly Lake, associate justice of the Supreme Court of North Carolina. He is presently a partner with Billings, Burns and Wells of Winston-Salem.

Mr. Wells is a member of the Forsyth County Bar Association, of which he is president-elect for 1981-82, the North Carolina Bar Association, and the State Bar of North Carolina and West Virginia. At Wake Forest he is a lecturer in law teaching Office Practice.

Kenneth A. Zick *Associate Professor of Law*

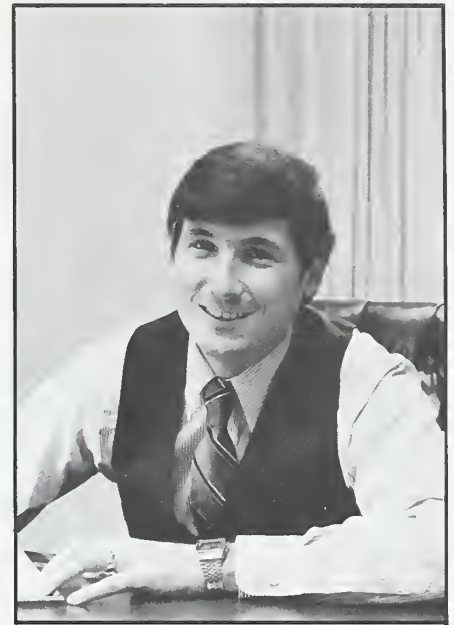
Kenneth A. Zick became part of the faculty of Wake Forest School of Law in 1975 and since 1977 has been the Moot Court Advisor. He works with the Moot Court teams and has gained much recognition himself in the area of oratory skills. He was the Best Debator at Albion College in 1970 and in that same year he was the Regional Oratory Champion. In law school he was a member of the National Moot Court Team and has been a speaker at two WFU-CLE programs.

Professor Zick received his A.B. from Albion College in 1971. His majors were political science and history and his minors were English and economics. From there he entered a Ph.D. program in political science at the University of Michigan. In 1974 he received his J.D. from Wayne State University and then returned to the University of Michigan the following year to obtain his M.L.S. During the summer of 1973-74 he clerked for the law officer of Jasmer, Kozlow & Wall in Southfield, Michigan. The following year he became an associate of that firm. Mr. Zick also completed a law librarianship degree at the University of Michigan.

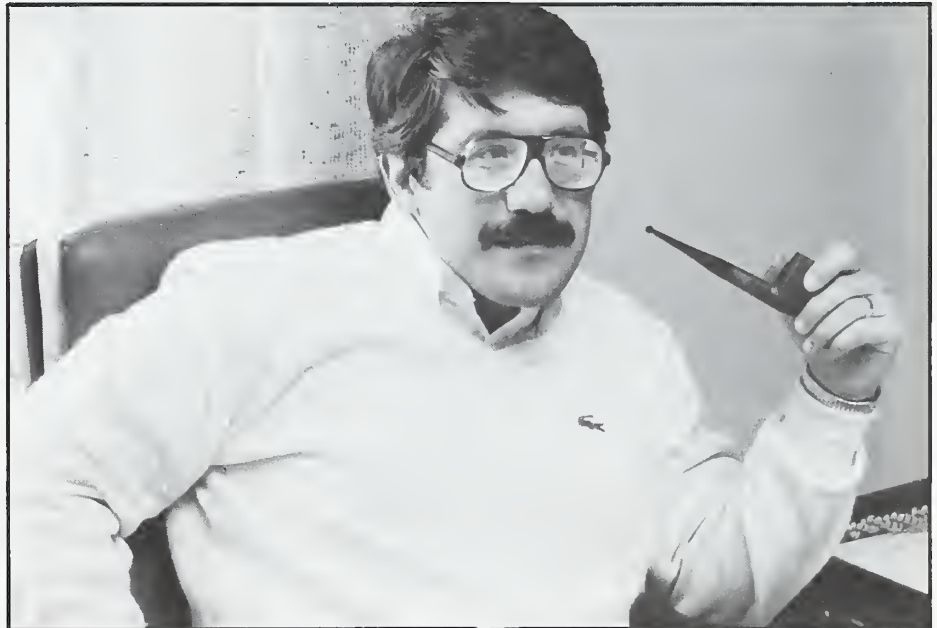
The director of law library services at Wake Forest University, Professor Zick currently teaches Introduction to Legal Skills, Criminal Law, and Appellate Ad-

vocacy III, IV and has taught Introduction to Procedure. He continues to maintain a legal practice and is involved with the student clinical practice in the United States Court of Appeals for the Fourth Circuit. Mr. Zick is active in the American Society of Writers on Legal Subjects in that he is their Administrator and has served as editor for the *Scrivener*. However, his writing talents are not confined to his editorial skills.

Mr. Zick has published articles which include *Hearing Procedures Under Landrum-Griffin Act*, *A Westlaw Primer*, *Information Management in the Law Office* and *Grievance Procedures in Law Libraries*. He has had published course materials entitled *Basic Legal Methods* and has written numerous appellate briefs. Mr. Zick is currently in the process of writing *A Guide to North Carolina Statutes of Limitations* to be published in 1982.



R. Michael Wells



Kenneth A. Zick

Faculty Emeriti



Robert E. Lee

Carroll W. Weathers

Hugh William Divine

Alumni Activities

Alumni at Pawley's Mission Statement

The Lawyer Alumni Executive Committee, meeting at the Litchfield Inn at Pawley's Island, held its Summer Planning Conference on July 30 - August 2.

The Committee focused on the Law School's Mission Statement, making recommendations on student recruitment, curriculum changes, and the market for law graduates. Their suggestions will be incorporated in the final form of the Mission Statement.

In his opening remarks to the Committee, Dean Scarlett reviewed the accreditation report, citing building and library needs as major considerations. Regarding capital needs, he said that by 1985, the Law School endowment needs to reach \$6 million. The current endowment figure is \$3 million.

Assistant Dean Leon Corbett reviewed the 1980-81 year, and Associate Professor Tom Roberts delivered the major points of the Mission Statement.

Placement Director Laura Myers reported that 95 percent of the 1980 graduates have been placed, and 12 students from that class have opened their own offices. 62 percent are practicing in North Carolina.

Three task forces — composed of Committee members, faculty members, and development staff members — studied the sections of the Mission Statement which deal with recruitment, curriculum, and market. Following their meetings on Saturday and Sunday, the task forces made these recommendations.

On the recruitment of students:

—The School of Law can attract the best students by improving the student/faculty ratio to 20/1 or better; by improving the physical plant; by increasing personal contact in recruiting; and by improving the availability of financial aid.

—Regional recruiting can be improved by extensive mailing of the new brochure; by using alumni in recruiting; and by developing new programs to better inform Wake Forest undergraduates about the School of Law.

—Admissions criteria can be strengthened by having alumni evaluate applicants and by making alumni aware that they should contact the Dean directly about applicants in whom they are interested.

—Recruiting of minority applicants can be improved by increasing loan and scholarship aid, possibly in cooperation with

minority-owned companies; by adding minority faculty members; and by expanding recruiting efforts at minority schools.

On curriculum:

—Because of the changing market for lawyers, the School of Law should explore the possibility of a program with the Babcock School which would lead to the J.D./M.B.A. degree.

—The accounting course which has been part of the curriculum should be revived in order to give law graduates a stronger background in business and finance.

—Students need more training in dealing with state and local government agencies.

—The practical aspects of procedure (preparing for trial, for example), should receive more emphasis.

—A third-year writing course should be added as an elective.

—The legal ethics program should be broadened so that it includes more than just a study of the Code of Ethics.

On market and placement:

—Because the demand will continue for well-trained private practice lawyers, the School of Law should continue to strengthen its basic curriculum.

—Because of North Carolina's rapid commercialization and urbanization, we should anticipate and plan for an increase in the demand for corporate attorneys.

—More attention should be given to administrative law to meet the requirements for non-traditional legal careers.

—A larger percentage of our graduates will be practicing outside North Carolina in the future. Our placement program should reflect this change.

Lawyer Alumni Executive Committee members attending the conference were Jones Byrd ('71), Marvin Gray ('60), Marshall Haywood ('59), Clay Hemric ('38), Charles Hostetler ('49), Max E. Justice ('70), Joe Nall ('73), Larry Pitts ('67), Paula Potoczak ('76), Jack Thompson ('65), and Web Trask ('76).

Julius Corpening, Robert Baker, and Sandra Connor represented the Wake Forest Development Office.

At the banquet on Saturday evening, Chairman-elect Joe Nall presented 1980-81 Chairman Jack Thompson with a silver Revere bowl as a token of the Committee's appreciation for his work.

Partner's Banquet

Former Congressman L. Richardson Preyer of Greensboro spoke at the ninth annual Partners Banquet at Bermuda Run Country Club on Friday evening, October 16.

Addressing a crowd of approximately 225 lawyer alumni, Law School faculty members, and University officials, Preyer praised the American judicial system, contrasting it with incidents of international lawlessness.

The Partners Banquet is an annual event for law fund Partners, Senior Partners, and Dean's Associates. This year, over 200 alumni and friends received awards for entering the Partners Program or qualifying for an advanced level.

Among those present for the banquet were Dr. and Mrs. James Ralph Scales; Dean and Mrs. J.D. Scarlett; Jack Thompson ('65), chairman of the Law Fund, and his wife Mary Nan; Horace Kornegay ('49) chairman of the Law Board of Visitors, and his wife Annie Ben; University Chaplain Edgar D. Christman ('53) and his wife, Jean; Director of Development Julius H. Corpening and his wife, Janet; and Vice President for Development G. William Joyner.

Law Board of Visitors

The law Board of Visitors met during the weekend of lawyer homecoming, October 16-17.

The first session, held on Friday afternoon at the School of Law, was called to order by chairman Horace Kornegay. Members attending the meeting included Jeff Batts, Paul Bell, G. Eugene Boyce, Judge David M. Britt, Mrs. Guy Carswell, James E. Johnson, Jr., James W. Mason, Henry C. Reomer, Henry F. Sherrill, Larry Sitton, Fred Turnage, Judge Hiram Ward, Philip B. Whiting, Larry Williams, George Womble, and new members Joslin Davis and Albert Zigler.

Following Kornegay's welcome, Associate Dean Leon Corbett reviewed the past academic year and reported on enrollment statistics for 1981-82. Corbett praised the Continuing Legal Education program, stating that last year, it served 1,159 people.

Dean Scarlett reported on accreditation and emphasized the progress that has been made in many areas, including library im-

provement and curriculum expansion.

Associate Professor Thomas Roberts addressed the group, highlighting the future plans for the School of Law.

Following this session, the Board met in three task force groups. Their reports on recruiting, curriculum, and market were presented at a Saturday morning breakfast meeting.

The Board will meet again on Law Day this spring.

Lawyer Homecoming

Lawyer Homecoming weekend this year was highlighted by open house at the Law School on Saturday morning, October 16, and a reception at Bermuda Run Country Club on Saturday evening, following the football game.

Faculty members and alumni visited at the Law School from 10 a.m. until noon preceding the Wake Forest-Maryland game. Members of the Law Board of Visitors and the Lawyer Alumni Executive Committee

were among those attending the open house.

Following the game, approximately 250 attended a reception at Bermuda Run. Afterwards, class reunion dinners were held for the classes of 1951, 1956, 1961, 1966, 1971, 1976, and 1981.

The 1951 reunion group presented a resolution making Dean Scarlett an honorary member of the class of '51. The resolution offered to the Dean all the privileges of a class member, including that of being solicited for a contribution to the law fund by the 1951 class agents.

Book Review

Lee adds a Fourth Volume to North Carolina Family Law

[*North Carolina Family Law* by Dr. Robert E. Lee. (Charlottesville: The Michie Company) 1981. 4 Vols. \$140.00]

Professor Robert E. Lee's *North Carolina Family Law* has long been the lawyer's companion in domestic relations practice. The three volumes originally published in 1963 have now been expanded to include a new fourth volume as part of the fourth edition. The new volume provides needed space for new topics in the fertile field of family law and is now available from the publisher. Additional pocket supplements will be provided as the product of a joint effort between Professor Lee and Professor Rhoda Bryan Billings, who will ultimately assume responsibility for continuation of this treatise.

Generally, Professor Lee provides a detailed account of the law in North Carolina against a background of the law of other jurisdictions. Topics are organized under the subject headings of Marriage and Divorce, Husband and Wife, and Parent and Child. Further, the author states in his preface to *North Carolina Family Law* that his work is intended to serve as a basic text for the beginning of the investigation of particular problems. Accordingly, the legal researcher is supplied with both a starting point and direction by means of a thorough exposition of the statutes and decisions of North Carolina, plus extensive

references to national legal texts, legal encyclopedias, legal periodicals, Restatements of the American law Institute, and annotated reports of cases both in this jurisdiction and others. Professor Lee is often cited as authority by appellate courts, particularly where no judicial precedent exists. Testimony to the clarity of his style is the fact that these books often find their way into the hands of family counselors, social workers, ministers, and other non-attorneys.

By adding a fourth volume Professor Lee addresses the need to confront new issues in family law, issues conceived in the technological advances and social changes of the past few years. New topics include test tube babies and grandparents' rights. New and extensive treatment is given to topics including surrogate mothers and unmarried cohabitation. The newly added fourth volume contains selections under the general heading of Parent and Child and under the subheadings of Contracts and Torts of Infants, Miscellaneous Laws Relating to Children, and Juvenile Courts and Services, along with the updated Index, Table of Cases and Statutes, and Appendixes to accompany the full four volume set. In addition, a pocket supplement appearing early in 1982 will cover the new Ewitable Distribution Act providing for judicial assignment of title upon divorce.

A number of sections of *North Carolina Family Law* were written in collaboration with Professor Rhoda Bryan Billings, a former student of Professor Lee's who is presently a member of the faculty of the Wake Forest University School of Law. While pocket supplements to *North Carol-*

ina Family Law will for the foreseeable future be prepared jointly, authorship will ultimately pass to Professor Billings.

The founding author of the treatise is Dean Emeritus and Professor Emeritus of the Wake Forest University School of Law. Professor Lee was born and reared in Kinston, North Carolina and holds degrees from Wake Forest, Columbia University, and Duke University. He has taught on the faculty of Temple University, the wartime U.S. Army University at Shriveham, England, the University of Florida, Wake Forest University, and Campbell University. Additionally, he has served as a member of General Statutes Commission of North Carolina, the Commission to Study Laws of Domestic Relations, the Commission to Improve the Administration of Justice in North Carolina, and the Legislative Drafting Committee on Laws of Decedent's Estates and trusts.

Professor Lee has been observed to comment that once an individual "gets printer's ink under his fingernails" he is rendered unable to resist writing and publishing books and articles. He is himself living proof of his own adage, as he is the author of several syndicated columns on law as well as eighteen law books and scores of articles in legal periodical and encyclopedias. But perhaps his most unique work is his biography of Blackbeard the Pirate. Professor Lee enjoys researching and writing about pirates and has threatened to "return to piracy" himself upon winding up the fourth edition of *North Carolina Family Law*.

Steve Aceto, Reviewer 3rd Year Student at Wake Forest School of Law

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An analysis of An Act for Equitable Distribution of Marital Property—G.S. § 50-20

Mollie L. Weaver wrote this article on the new Equitable Distribution Statute for District Court Judge James A. Harrill, Jr., in connection with the Wake Forest Judicial Clerkship Program. Mollie received her B.A. in History from the University of Richmond in 1978 and will complete requirements for her J.D. from Wake Forest in December, 1981. Prior to returning to school in 1975, she worked for Western Electric in the areas of training, personnel, and business methods.

Equitable distribution does not apply unless one party asks that it be applied. That person must petition the court; *N.C.G.S. § 50-20 (a)*, the Court *shall* determine what is marital property, and the Court *shall* provide for an equitable distribution of that property.

The Statute defines marital property as: "all real and personal property acquired by either spouse during the course of the marriage and presently owned, *except* property determined to be separate property in accordance with subdivision (2) of this section in *N.C.G.S. § 50-20 (b)*." Under this subdivision, separate property is:

1. All real and personal property acquired by a spouse before marriage
2. Property acquired by a spouse by bequest, devise, descent, or gift during marriage
3. Gifts from other spouse during marriage *if* the intention that it be separate property was stated in the conveyance
4. Property acquired in exchange for separate property *regardless of title*
5. Increase in value of separate property (Note, however, that under *N.C.G.S. § 50-20 (c) (8)*, this can be one of the factors that the Court considers in determining equitable distribution.)
6. Income derived from separate property
7. Professional licenses and business licenses which would terminate on transfer
8. Vested pension or retirement rights and expectation of nonvested pension or retirement rights (Note, however, that under *N.C.G.S. § 50-20 (c) (5)*, this is one of the factors that the court considers in determining equitable distribution.)

The above determinations of property as "separate property" raise several potential problem areas:

1. The North Carolina Constitution, Article X, sec. 4, states that a married woman's property "shall remain her sole and separate estate." The Constitution defines separate prop-

erty much more broadly than does *N.C.G.S. § 50-20 (b) (2)*. For example, the money that the wife earns during marriage which would remain separate property under the Constitution becomes marital property under *N.C.G.S. § 50-20 (b) (2)*; and thus subject to be transferred to the husband.

2. The definition of separate property makes no mention of how title is held. So, if the property fits the definition of marital property, it will be available for distribution regardless of who holds title. Prior to this new Statute, North Carolina was a title state.
3. Another problem area will be the provision which states that increases in value of separate property remain separate property. In *Painter v. Painter*¹, a New Jersey case, the court held:

"We also hold that if such property, owned at the time of the marriage, later increases in value, such increment enjoys a like immunity. Furthermore the income or other usufruct derived from such property, as well as any asset for which the original property may be exchanged or into which it, or the proceeds of its sale, may be traceable shall similarly be considered the separate property of the particular spouse. The burden of establishing such immunity as to any particular asset will rest upon the spouse who asserts it."²

The problem arises if the separate property increases in value due to the efforts of the other spouse. In *Scherzer v. Scherzer*,³ another New Jersey case, the court ruled that the wife was entitled to share in the increased value of the corporation to the extent that it was attributable to her efforts, even though intangible.⁴ In *Mol v. Mol*,⁵ however, the court ruled that increase in value of a husband's equity interest in property which was acquired prior to marriage and which was due simply to inflation or other economic factors would not be subject to distribution upon divorce.⁶ The evidence in *Mol* revealed that the wife's efforts did help to keep the property in good condition, and it would not

1. *Painter v. Painter*, 65 N.J. 196, 320 A.2d 484 (1974).

2. *Id.* at 214, 320 A.2d at 493.

3. *Scherzer v. Scherzer*, 136 N.J. Super. 397, 346 A.2d 434 (1975).

4. *Id.* at 401, 346 A.2d at 436.

5. *Mol v. Mol*, 147 N.J. Super. 5, 370 A.2d 509 (1977).

6. *Id.* at 7, 370 A.2d at 512.

have increased in value had it not been in good condition.⁷ Thus, it appears that New Jersey courts are divided upon whether increases in value due to efforts of the other spouse are separate property or marital property.

The New York Statute provides that the appreciation of separate property is separate property "except to the extent that such appreciation is due to the contribution or effort of the other spouse." Since the North Carolina Statute was modeled after the New York Statute and since this particular language was expressly left out of the North Carolina Statute, it could certainly be argued that the legislature intended that appreciation in value of separate property remain separate property, regardless of the other spouse's contribution.

In any event, if the increase in value is due to the efforts of the other spouse, the Court *shall* consider this factor in making equitable distribution (§ 50-20 (c) (8)).

4. Under *N.C.G.S. § 50-20 (b) (2)* professional licenses are separate property. Whether this language is broad enough to include not only the license, but also the supporting degree remains an open question. In New Jersey, in *Mahoney v. Mahoney*,⁸ the court held that the husband's advanced Business Administration Degree was subject to distribution, and in *Lunn v. Lunn*,⁹ the medical degree was considered as a distributable asset. In two other states though, the court held the degree to be separate property.¹⁰

The Court shall consider "any direct or indirect contribution made by one spouse to help educate or develop the career of the other spouse." *N.C.G.S. § 50-20 (c) (7)*. Both the New Jersey cases, *supra*, involved marriages that ended before the husband used his professional training to establish a business that was itself of some value. If there is other marital property, the degree may not be a problem; but if one spouse has worked and supported the other spouse while he/she obtained an advanced degree, and that degree is the only significant asset at the time of distribution, the court will be faced with a difficult decision. Mr. John E. Finnerty, a New Jersey attorney, suggests that the fair way to provide redress to a spouse in this position is to value the amount of earnings contributed during the period and then reimburse her/him in that amount. But, he suggests that since this method doesn't fairly compensate the supporting spouse for the sacrifice in time that could have been used in developing a career, an additional amount is warranted for that sacrifice.¹¹

5. Pension plans are separate property. *N.C.G.S. § 50-20 (b) (2)*. This rule appears to be in line with other jurisdictions and with a U.S. Supreme Court's decision that held federal pensions to be separate property.¹² Still, *N.C.G.S. § 50-20 (c) (5)* states that vested and nonvested pension or retirement rights *shall* be considered by the Court in making equitable distribution. So, if one spouse has pension or retirement rights while the other one does not, the Court must certainly use this fact in determining distribution of the marital property.

After deciding what is marital property and what is separate property, then the Court must establish net values for all property. When parties can agree on value, there is no problem; but when they do not agree, it may well require the use of expert appraisals.

It appears that liberal pretrial discovery will be necessary to make sure that attorneys for both sides are fully prepared to provide the relevant data required in order for the Court to make equitable distribution. (See pages 160-233 of the North Carolina Academy of Trial lawyers Equitable Distribution Material, Sep-

tember, 1981, for an example of interrogatories used to identify marital property. The use of such detailed discovery may well facilitate settlement of equitable distribution cases.)

The date of the filing of the complaint for divorce is the date used as the cutoff date for acquisition of assets eligible for equitable distribution, and it appears from *G.S. § 50-20 (k)* that assets will usually be valued as of that date.

In setting forth the facts of valuation (for potential review by appellate courts), the Trial Court must explain how and why it determined certain assets were available for distribution, set forth the value of the assets, and explain how the value was set and the manner of allocation.¹³

After the court has valued the marital property, then *N.C.G.S. § 50-20 (c)* says that there shall be *equal distribution unless the Court determines that equal division is not equitable* in which case the Court shall divide the marital property equitably. Thus, the language of the statute implies that equal is equitable unless *one of the parties makes a motion for equitable distribution* and supports this motion with facts that apply to the factors which *N.C.G.S. § 50-20 (c)* says the Court *shall*, not may, consider. The factors to be considered are:

1. The income, property, and liabilities of each party at the time the division of property is to become effective.
 - a. This factor means that even though separate property is excluded from equitable distribution, the present individual worth of each party is a relevant factor for the Court to consider in arriving at a equitable distribution of property.
 - b. It would appear that if one party was already receiving alimony and/or child support, that amount should be considered here; however, *N.C.G.S. § 50-20 (f)* specifically provides that equitable distribution is made without regard to alimony and/or child support. After an equitable distribution, a request that alimony or child support orders be modified or vacated will probably follow.
2. Any support from a prior marriage.
 - a. In New York and New Jersey, the courts have felt that a long marriage (one of 10 years or more) creates more need for financial protection than does a short marriage. The real focus of this factor is the probable financial future of the parties and their respective needs, a potentially dominant factor when the marriage has been long and involves elderly or disabled persons.¹⁵
4. The need of a parent with custody of a child or children of

7. *Id.* at 6, 370 A2d at 511.

8. *Mahoney v. Mahoney*, 175 N.J. Super. 443, 419 A.2d 1149 (1980).

9. *Lynn v. Lynn*, Docket No. M-9842-77, decided 12/5/80, 7 Family Law Reporter, January 6, 1981, 3001. Opinion has not yet been approved for publication by New Jersey Supreme Court's Committee On Publication of Opinions.

10. *Dewitt v. Dewitt*, 98 Wis. 2d 44, 296 N.W.2d 761 (1980) and *In Re Marriage of Aufmuth*, 89 Cal. App. 3rd 446, 152 Cal. Rptr. 668 (1979).

11. John E. Finnerty, *New Jersey Practice*, Chapter 103, Sections 2851 to 2861, Equitable Distribution (1981).

12. *Hisquierdo v. Hisquierdo*, 99 S.Ct. 802 (1979).

13. Finnerty, p. 37.

14. Foster, *Commentary on Equitable Distribution*, 26 N.Y. L. Rev. 1 (1981).

15. *Id.*, p. 34.

the marriage to occupy or own the marital residence and to use or own its household effects.

- a. The language "of the marriage" would imply that children from another marriage do not fall within this factor; however, children from a prior marriage can be considered by the Court under factor 12.
5. Vested pension or retirement rights and the expectation of nonvested pension or retirement rights, which are separate property.
 - a. The receipt or potential receipt by one spouse of pension or retirement benefits shall be considered by the Court in making equitable distribution. If the parties are near retirement age with little marital property and one party has the right to a pension while the other party does not, this may well be the critical factor.
6. Any equitable claim to, interest in, or direct or indirect contribution made to the acquisition of such marital property by the party not having title, including joint efforts or expenditures and contributions and services, or lack thereof, as a spouse, parent, wage earner or homemaker.
 - a. This may well be one of the hardest factors to apply and will involve much trial strategy by the homemaker's lawyer. In determining how to value the noneconomic contribution of the homemaker, states have usually used one of three methods. These are: (1) replacement cost, (2) opportunity lost, and (3) an electric method which combines (1) and (2) and adds other contributions such as being a "corporate wife", tax savings, etc.¹⁶ Replacement cost involves an inventory of the job performed by the homemaker, the hourly rate that would be paid to a third person to perform the job, and the hours per week spent on each particular task.¹⁷ This cost analysis has been used by negligence lawyers in assessing damages in wrongful death cases, and it can result in figures of from \$20,000 to \$41,000 per year. In trying to prove replacement cost, the defending spouse will undoubtedly be able to question the quality of the service rendered. (For an example of a checklist inventory to determine replacement cost, see page 88 of the North Carolina Academy of Trial Lawyer's Equitable Distribution Material, September, 1981.)

The "Opportunity lost approach" focuses on the foregone opportunities of the homemaker. An example is where the wife who was in medical school with her husband left school and worked to put her husband through medical school. In such a case, the theory is that by foregoing her opportunity, she enriched the marriage. The problem with this approach is that like replacement cost, it is very speculative.

Probably, attorneys will use a combination of the two and will introduce evidence of both value of service and lost opportunity. The New Jersey court stated that equitable distribution:

"gives recognition to the essential supportive role played by the wife in the home, acknowledging that as homemaker, wife, and mother she should clearly be entitled to a share of family assets accumulated during the marriage. Thus the division of property upon divorce is responsive to the concept that marriage is a shared enterprise, a joint undertaking, that in many ways it is akin to a partnership. Only if it is clearly understood that far more than economic factors are involved, will the resulting distribution be equitable within the true intent and meaning of the statute."¹⁸

Mr. H.H. Foster, Jr., Professor of Law Emeritus at New York University, and past chairman of the Family Law Section of the

American Bar Association, has said that:

- "Insofar as the burden of proof is concerned, divorce courts are likely to hold that in the homemaker-wife situation, where the wife does not have outside employment, her services are presumed to be of value equal to the contribution of the husband and that the norm should be a fifty-fifty division of family assets unless it is established that the wife in question was unusually competent or incompetent, or there are countervailing equities in the particular case which fall within the statutory criteria."¹⁹
7. Any direct or indirect contribution made by one spouse to help educate or develop the career potential of the other spouse.
 - a. As mentioned previously on page 3, when the degree is the only significant marital asset, this may well be the critical factor.
 8. Any direct contribution to an increase in value of separate property which occurs during the course of the marriage.
 - a. This factor allows the Court to consider any increase in value of separate property which is due to the efforts of the other spouse. It becomes a matter of proof as to what was the spouse's contribution and what was due simply to market inflation. (Note discussion in 3. on page 3 above.) If one spouse has worked as an unpaid employee in the separate business of the other spouse, that certainly seems to be a direct contribution which would fall within this factor.
 9. The liquid or non-liquid character of all marital property.
 10. The difficulty of evaluating any component asset or any interest in a business, corporation, or profession, and the economic desirability of retaining such asset or interest, free from any claim or interference by the other party.
 - a. These two factors may well be read together. They provide flexibility for the court in making equitable distribution and in allocating marital assets. The presence of these factors may cause the court to grant a distributive award as defined in *N.C.G.S. § 50-20 (b) (3) and (e)*. Note that factor 10 includes profession which would include a physician's interest in a professional association or an attorney's interest in a partnership. In a recent New York case, the wife was awarded a distributive award in lieu of a one-quarter interest of the one-half interest that her physician husband owned in an abortion clinic.²⁰
 11. The tax consequences to each party.
 - a. In looking at the tax consequences, the court must be aware of the decision in *U.S. v. Davis*.²¹ In *Davis*, a husband transferred stocks which has appreciated in market value to his wife in return for release of her marital claim. The Supreme Court held that this transfer was not a nontaxable division of property between co-owners, but rather a taxable transfer of property in satisfaction of a legal obligation.²² In contrast, in com-

16. *Id.*, p. 41.

17. *Id.*, p. 42.

18. *Rothman v. Rothman*, 65 N.J. 219, 229, 320 A.2d 496, 501 (1974).

19. Foster, p. 45.

20. *Nehorayoff v. Nehorayoff*, 108 Misc. 2d 311, 437 N.Y.S.2d 584 (1981).

21. *U.S. v. Davis*, 370 U.S. 65 (1962).

22. *Id.* at 67-68.

munity property states, where there is a division of community property, there is no capital gain tax imposed on the transfer.

In two cases from the Tenth Circuit, the divorce and marital property laws of Colorado and Oklahoma were viewed as having the characteristics of community rather than common law property.²³ This result was reached on the theory that under state law there was a preexisting ownership of the property transferred so that the transfer was not a taxable event. In North Carolina, the problem appears to be in the language of *N.C.G.S. § 50-20 (k)* which states that the rights of the parties vest at the time of the filing of the divorce action. If the property that is distributed were in the name of the other party prior to distribution, the IRS is sure to argue that *Davis* applies.

Professor Foster of New York suggests that to avoid malpractice liability, attorneys in equitable distribution cases would be well advised to obtain tax assistance from experts for purposes of negotiation and trial. He also says that a trial judge must insure that the records show expert information on the issue of tax consequences so that this factor can be given proper weight in making equitable distribution.²⁴

12. Any other factor which the court finds to be just and proper.
 - a. This is the catch-all phrase which allows the Court to weigh and balance matters which may have been overlooked through the application of the other factors.
 - b. The obvious question that arises here is whether or not fault can be considered. In New Jersey, the court has said that "marital fault" is a factor which trial courts may not consider in allocating property.²⁵ However, the New Jersey Court has defined "marital fault" very narrowly as "cause or grounds for divorce."²⁶ In a 1978 case, the Trial Judge determined that fault should be taken into consideration, and his decision was affirmed on appeal.²⁷ (In that case, the fault was that the husband had attempted to have his wife murdered.)
 - c. When the New York Statute, upon which the North Carolina Statute was modeled, was drafted, many committees and legislators wanted "Marital Fault" inserted as an express factor to be considered; but they compromised and went along with the language of factor 12. since the New York Statute only went into effect on July 19, 1980, few cases have addressed the issue of fault. However, in a June, 1981, New York decision, *Giannola v. Giannola*,²⁸ the New York Supreme Court held that marital fault was a factor to be considered in making equitable distribution, but fault would not preclude an award of equitable distribution.²⁹
 - d. Thus, even if fault is considered by the Court, there are other factors also for the Court to consider; and a finding of fault will not preclude equitable distribution. The Court has discretion in weighing the factors, and thus fault may or may not be important, depending on the circumstances of the particular case and the position of the particular parties.

The importance of *N.C.G.S. 50-20 (d)* is that it states that the parties may contract out of equitable distribution and provide for their own distribution of property. In such cases, the parties should have separate attorneys, and there should be adequate disclosure. New York cases have held that when parties contract between themselves to divide property, that contract prevails, and a subsequent motion for equitable distribution is denied.³⁰

When an equitable distribution in kind would be impractical,

N.C.G.S. § 50-20 (e) provides that the court may order a distributive award payable in a lump sum or over a period of time in fixed amount. These payments must be such that they are not ordinary income to the receiving party, and a Court must be careful not to exceed the value of the marital property in making a distributive award. The distributive award will probably be of most value in an equitable distribution case where the marital property consists primarily of a closely held corporation which would be difficult and impractical to divide. Professor Foster says there is no body of case law in other states to provide clues for the Trial Court to use in making a distributive award.³¹

N.C.G.S. § 50-20 (f) provides that distribution is made without regard to alimony or child support obligations, but since it also provides that a party can request a modification of alimony or child support after equitable distribution, each equitable distribution involving a family will probably have three actions: (1) an alimony/child support hearing, (2) an equitable distribution hearing, and (3) a rehearing of alimony/child support due to changed circumstances.

N.C.G.S. § 50-20 (g), (h), and (i) are enforcement methods for the Court to use to see that its orders are carried out. These methods include transfer of property interest and/or title, *lis pendens*, and an injunction, and are available only after the action for divorce has been filed and a request has been made for equitable distribution. This raises a real problem of what can be done between the time of separation and an action for divorce to protect the assets.

N.C.G.S. § 50-20 (k) has caused a great deal of discussion. It clearly states that the rights of the parties vest at the time of the filing of the divorce action; therefore, there is no right to property under this Act until the divorce action is filed. As stated above, the provisions of (g), (h), and (i) are not available during this interim period. Thus, it appears that the only remedy is the extraordinary equity injunction or permission from the court for early discovery, even though the action for divorce is not actually pending and discovery would ordinarily not be available. In a recent New York case, the Court said that the wife was not entitled to a temporary restraining order or preliminary injunction, prior to the divorce action, when there was no substantial evidence that the husband, a reputable businessman, was about to make transfers which would impair the wife's ability to obtain equitable distribution.³² It follows that if one spouse had evidence of a potential unfair transfer, the court would grant appropriate relief.³³ Of course, if one party transfers property during the interim period in an attempt to defraud the other party, and the other party discovers and proves such transfer, the Trial Judge can order the transferred property's value included as marital property and then award the transferred

23. *Imel v. U.S.*, 523 F.2d 853 (1962) and *Collins v. Comm.*, 412 F.2d 211 (1969).

24. Foster, p. 77.

25. *Chambers v. Chambers*, 65 N.J. 186, 320 A.2d 478 (1974).

26. *Id.* at 193, n. 3, 320 A.2d at 482, n. 3.

27. *D'Arc v. D'Arc*, 164 N.J. Super. 226, 395 A.2d 1270 (1978).

28. *Giannola v. Giannola*, _____ Misc. 2d _____, 441 N.Y.S.2d 341 (1981).

29. *Id.*, 441 N.Y.S.2d at 342.

30. *Gedraitis v. Gedraitis*, _____ Misc. 2d _____, 439 N.Y.S.2d 978 (1981).

31. Foster, p. 50.

32. *Bisca v. Bisca*, 108 Misc. 2d 227, 437 N.Y.S.2d 258 (1981).

33. *Froehlich-Switzer v. Seitzer*, _____ Misc. 2d _____, 436 N.Y.S.2d 123 (1981).

property as the transferring party's share of the marital property.³⁴

N.C.G.S. § 50-20 (j) requires the Court to make written findings of fact. Decisions from New York and New Jersey indicate that these must be extensive and detailed. In New Jersey, there have generally been three issues raised on appeal concerning equitable distribution:

1. Whether or not an asset was subject to equitable distribution
2. The valuation of the asset
3. The manner of the allocation

When either of the first two issues are raised, the standard of review is whether the Trial Judge's findings are supported by adequate credible evidence in the record.³⁵ In determining whether or not the manner of allocation was fair, the Appeals Court will look to see if the amount and manner of the award constitute an abuse of the Trial Judge's discretion.³⁶ If the Trial Court fails to explicitly recite its findings of facts and the evidence that supports its findings or to corroborate them, it has failed adequately to find the facts and committed reversible error.³⁷

probably begin to routinely request equitable distribution; and this motion may not always be a good idea. Unless the parties to an action agree on what is and what is not marital property and on value, the trial process will be so long and expensive that much of the marital property's value will be consumed by the fees of experts and attorneys.

The lengthy trial process will flood already crowded courts with a backlog of cases. To assist in alleviating this problem, Trial Judges should insist on liberal discovery and on pretrial hearings and limit the actual trial to the truly disputed issues. The burden on a Trial Judge will be increased by the fact that his opinion must spell out with specificity the findings of facts and conclusions of law upon which his decision rests, or he will find himself reversed on appeal.

After research on equitable distribution and the new Statute, about the only thing that can be said with assurance is that the next several years will be busy, frustrating ones for domestic lawyers and Trial Judges as *N.C.G.S. § 50-20* is interpreted in North Carolina.

GENERAL PROBLEMS WHICH THE STATUTE RAISES

1. A person who wishes to request equitable distribution, but who filed for divorce before October 1, 1981, may try to take a voluntary dismissal and then refile after October 1, 1981. To avoid this problem, the other party to such an action should immediately file a counterclaim for absolute divorce.
2. *N.C.G.S. § 50-21* says that nothing in *N.C.G.S. § 50-20* "shall restrict or extend the right to trial by jury as provided by the Constitution of North Carolina." However, *N.C.G.S. § 50-20* directs the Court to make all determinations; so it does not appear that a jury trial will be sued under the Statute. The Statute says that the Court "shall" determine what is separate property and what is marital property, and the Court "shall" provide for an equitable distribution of the marital property. In both New York and New Jersey, equitable distribution cases are heard and decided by the Court without the use of a jury.
3. *Attorneys Fees*—In both New York and New Jersey the courts have felt that if both parties receive a substantial amount of property in the equitable distribution, then each party is responsible for his/her own attorney fees. If, however, one party receives substantially less property, that party may also receive attorney fees.³⁸ The question of contingent fees arose at the local (Winston-Salem) Bar Association Meeting. Research has not brought forth any cases in equitable distribution which has mentioned contingent fees. Professor Herring of Wake Forest suggests that since there can be no equitable distribution until after divorce there is no real prohibition against contingent fees.

The objective of the Legislature in passing *N.C.G.S. § 50-20* was to eliminate marital iniquities which often resulted from North Carolina's common law concept of title. Under the title theory, a woman could spend thirty years as a homemaker, supporting the husband and family with her efforts in the home, and then find, at the time of divorce, that all "their" property belonged to the husband. The legislative objective was a good one, but in the hurry to get the Statute enacted, not enough care was given to its drafting. Thus, the real success or failure of the Statute rests with the courts and with how they interpret the many potential problems.

Attorneys, especially those who represent homemakers, will

34. *Id.*, 436 N.Y.S.2d at 124.

35. *Rothman v. Rothman*, 65 N.J. 219, 233, 320 A.2d 496, 504 (1974).

36. *Borodinsky v. Borodinsky*, 162 N.J. Super. 437, 393 A.2d 583, 587 (1978).

37. *Harmon v. Harmon*, 161 N.J. Super. 206, 211, 391 A.2d 552, 554 (1978).

38. *Laverne v. Laverne*, 148 N.J. Super. 267, 372 A.2d 629 (1977).

PENALTIES & PROCEDURE CHANGES *in the Economic Recovery Tax Act of 1981*

NEW TAX PROCEDURE AND ADMINISTRATIVE RULES DEMANDING ATTENTION

by MALCOLM E. OSBORN.

This tax update was delivered to members of the Small Business Council, greater Winston-Salem Chamber of Commerce at a Breakfast Seminar, November 4, 1981. The Jurist is pleased that Mr. Osborn (see faculty section) authorized its publication in its fall issue.

In addition to changes in substantive law (income, estate and gift tax changes), there are several important procedural/administrative changes which will have an important impact upon taxpayers. Higher interest rates on unpaid taxes, new penalties and a toughening of existing penalties will increase the dangers of aggressive tax planning.

A. New High Interest Rates on Unpaid Taxes

1. Background

Until the early 1970's the government charged 6% simple interest on late tax payments. This deferral of payments provided a low cost source of financing for both individuals and business and caused a high case load in the Tax Court, where taxpayers can litigate their tax cases before paying their taxes, and where cases could be pending for several years. In the early 1970's Congress provided a provision setting the rate at 90% of the prime rate charged by commercial banks the preceding September. (Currently, the interest rate on deficiencies [and overpayments] is 12%.) Once the rate was in place, IRS had to wait two years to adjust it--no matter what might be going on in the interest rate market.

2. From Now On The Rate Will Jump

From now on, however, the interest rate IRS charges (as well as the rate it pays for overpayments and the rate at which it penalizes underpayments of estimated tax) is going to be 100% of the prime rate. Code §6621 (b) and (c) as amended by '81 Act §711 (a) and (b). This means, *every year*, by October 15, IRS will ascertain the September prime rate. If such September prime is a full percentage point more or less than the rate then in use by IRS, an adjustment will be made—with the new rate taking effect the following January 1st.

Note that this is the rule for 1983 and thereafter. The rate IRS calculates based on the September, 1981 prime will not be effective until February 1, 1982. Thus, the present 12% rate will be in effect through January, 1982. Then, *the rate will jump to 20%*. See *IRS News Release* (10/15/81 and Rev. Rul. 81-260 attached hereto).

This rather substantial increase in the interest rate on deficiencies *should remove much of the incentive for taxpayers to use IRS as a source of low interest loans*; that is, *taxpayers will be penalized* for delay in settlement and payment of taxes. This means, among other things, that tax deficiencies still unpaid or in litigation as of February 1, 1982, will be hit with the new rate (20%) from that point on.

3. Observation

Payment of "part" of a deficiency before filing a Tax Court petition won't deprive the taxpayer of the right to go to the Tax Court. See 24 Fed. Tax Coor. 2d 's T-1910 and T-3301. Such payment may now be desirable in order to stop the running of the 20% interest.

B. Increased Negligence Penalty

Present tax law provides for a penalty of 5% of any underpayment of taxes due to negligence or intentional disregard of rules and regulations. Code §6601 provides for the assessment of interest on underpayments. The '81 Act provides for an additional negligence penalty of 50% of the Code §6601 interest attributable to negligence or intentional disregard of rules and regs.

This 50% penalty—which is not deductible—applies to interest for the period beginning on the last day for payment of the underpayment and ending on the date of assessment. See Code §6653 (a) (2) as added by the '81 Act §772 (b).

With the interest rate on deficiencies soon to increase to 20%.

Observation

Present law provides that if *any part* of a deficiency in tax is due to negligence or intentional disregard of Regulations, a penalty of 5% of the total amount of the deficiency is added. Code §6653 (a). Thus, even where a part of the deficiency does not arise due to negligence or intentional disregard of the rules or regs. since some of it does, the present law provides a 5% penalty of the total underpayment. Code §6653 (a). It seems that this interpretation will not apply to the new 50% penalty since the '81 Act imposes the

this additional penalty alone could amount to as much as 10% of the negligent underpayment.

Example: A taxpayer has a \$5,000 underpayment outstanding for a year. At 20% interest, that results in an additional liability of \$1,000. The new penalty—50% of the \$1,000 of interest—is a non-deductible \$500. For more detail, see Panel Publishers, *How To Handle Tax Audits*, Supplement No. 28 (1981-28) at 9605-9606.

Congress linked this penalty with the interest due on underpayments to provide taxpayers with a greater incentive to avoid negligent actions (or inactions) and it provides a disincentive to delay the settlement of tax disputes. See H. Rept. p. 245.

nondeductible addition to tax "equal to 50% of the interest attributable to that portion" of an underpayment which is attributable to negligence or intentional disregard for rules and regs. See *Summary of H. R. 4242*, prepared by Staff of The Joint Committee on Taxation. (8/5/81) at 47.

C. A "Sleeper"—The Stiff Penalty for Overstating Value or Basis of Property

This provision was written into the new law without any advance publicity or fanfare, but it will have a substantial impact on taxpayers (in a very negative way). The '81 Act (§6659) authorizes the IRS to impose a stiff penalty when a taxpayer relies on an *overstated valuation* of property to gain a tax benefit.

This benefit may apply in a whole range of situations where valuation comes into play (such as):

- (a) tax shelters
- (b) gifts of appreciated property to charity
- (c) valuation of property included in an estate
- (d) business acquisitions

1. Background

At the time this new tax law was being written there were 500,000 tax disputes pending which involved property questions of property valuation, with approximately \$2.5 billion in tax money at stake in these disputes. See Panel Publishers, *How to Handle Tax Audits*, Supplement No. 28 (1981-28) at 9606. This same text (Panel Publishers) pointed out that:

"Congress perceived that valuation controversies are often resolved when IRS and the taxpayer agree to split the difference. Congress saw this as a powerful incentive for taxpayers to pad or inflate when it came time to claim a value for property.

In an attempt to cancel this 'invitation to exaggeration,' Congress has decided to penalize taxpayers when they make a significant overstatement of value. (In the House Committee

Report, Congress indicated that it was not condoning 'minor' overvaluations, but it nevertheless chose to restrict the penalty to significant cases.)" Panel Publishers at 9606.

2. How Code §6659 (as added by '81 Act §722 (a)) Works

The '81 Act provides for a penalty tax if the value (or basis) of property as claimed on any return exceeds 150% of the "correct" value (or basis). This penalty applies to individuals, closely-held corporations (over 50%—owned by five or fewer persons), and personal service corporations. Code §6659.

(see above) has an underpayment attributable to a valuation overstatement (inflated value).

If the taxpayer claims a value for the property that is between 150% and 200% of its "correct" value—the value arrived at by IRS (or a court)—the penalty is 10% of the resulting underpayment. This 150% figure seems to be what Congress considers the line between minor and major overstatements of value. There is no penalty if the taxpayer's value is less than 150% of IRS' value.

If the taxpayer claims a value for the property that is more than 200% and up to 250% of its "correct" value, the penalty is 20% of the resulting underpayment.

If the taxpayer claims a value for the property that is more than 250% of the property's "correct" value, the penalty is 30% of the resulting underpayment.

3. There are Exceptions so that No Penalty Applies if:

- (1) The underpayment of tax in a particular taxable year attributable to the inflated valuation is less than \$1,000 (so, the penalty could apply to some but not all taxable years affected by the overstated valuation); or
- (2) The taxpayer held the property for more than five years; or
- (3) If the taxpayer can demonstrate that there was a "reasonable basis" for the value of the property claimed on the return and the claim was made in good faith. If taxpayer can establish this "reasonable basis" the IRS can waive all or a part of the penalty. Code §6659 (e). This writer cannot find any guidelines on this fact question in the Code (§6659) nor in the new legislative history on what is a "reasonable basis." Thus, this will be left to the IRS/Treas. for a decision.

Congress felt that taxpayers have been encouraged to overvalue property for two reasons: (1) valuation issues are frequently resolved "splitting the difference" between IRS and the taxpayer; and (2) the tax interest rate is below

the prevailing interest rate. Thus, it was in taxpayer's interest to delay the resolution of a valuation question in Appellate (Appeals Office) and Tax Court. Thus, it was decided to penalize "significant overstatements." H. Rept. pp. 243 and 244.

4. *Please note* this penalty applies to all returns *filed* after December 31, 1981, thus all 1981 tax returns filed in 1982 are subject to this new harsh penalty.

5. *Example:* Suppose a taxpayer holds property which he claims has a cost basis for depreciation purposes of \$300,000. The Service determines the cost basis for depreciation to be one-half that figure or \$150,000. Using his figure, the taxpayer who is in the 50% tax bracket claims a cost recovery (depreciation) deduction of \$20,000. The IRS under the new rules can hit him with a \$500 penalty since the taxpayer's value was 200% of the IRS value. This caused the taxpayer's deduction to be overstated in the amount of \$10,000. Since he is in the 50% tax bracket he has a \$5,000 understatement. Ten percent of his underpayment due to his overstated value is \$500.

If this goes on for several years, this taxpayer has one high penalty to face when and if the issue is raised in audit.

6. Tax Shelters are in More Trouble

Most tax shelters depend on the value of the property obtained or developed to support depreciation deductions and investment tax credits. The new issue here is whether or not the valuations included in these offerings qualify as a "reasonable basis" for claiming the valuations so as to be excused under Code §6659 (e). It seems clear this penalty will cause trouble for investors in tax shelters such as master recordings of musical records ("mother" disks) or any other shelter based on a possible inflated value. Add to this penalty the 20% interest on a tax deficiency (that could cover several tax years) and add to this the "old" 5% negligence penalty and add again the new 50% penalty on interest attributable to negligence and you have given any investor who is in one of these deals enough to worry about for some time.

7. Others Need Be Concerned Too

Tax shelter investors are not the only ones to be concerned; this could affect any taxpayer. Take the taxpayer who gives a valuable painting as a charitable contribution. Now such donor has to worry if the value was established on a "reasonable basis." Again, consider the taxpayer who acquires business property (land and buildings) for one unallocated sum. Now the taxpayer needs a careful allocation of cost between depreciable buildings and non-depreciable land.

8. Observation

Now when a tax practitioner conducts negotiations with the IRS on a valuation issue he/she must watch for settlements which result in a settlement figure which may trigger this penalty. Remember the penalty applies when the value originally claimed by taxpayer is 50% more than the IRS value. The IRS will be aware of the penalty and may be less prone now to reach compromise settlements.

D. Here are Some Miscellaneous Provisions

1. Penalty for Supplying False Withholding Information

The IRS has been fighting the practice of taxpayers who claim large numbers of withholding exemptions (without justification) on their W-4 Forms. In Regulations issued last spring, the IRS went after the employer to submit copies of the W-4 to the Service where an employee claims more than nine exemptions.

Now with this new law Congress has gone after the taxpayers and imposed a civil penalty for filing false withholding information (increased from \$50 to \$500). Code §6682 (a) as amended by '81 Act §721 (a).

The 1981 Act also increases from \$500 to \$1,000 the criminal penalty for willfully failing to supply information, or for willfully supplying false or fraudulent information in connection with wage withholding. See Code §7205 as amended by '81 Act §721 (b). (It is possible to receive up to one year in prison as a criminal penalty under "old" rules.)

2. Penalty for Failure to File Information Returns (Form 1099 and Form W-2) Increased

Present ("old") law requires taxpayers to file a variety of information returns with the IRS. Generally, such returns relate to payments to, and transaction with, other persons. The present penalty for failure to file most information returns is \$1.00 per return, subject to a maximum of \$1,000 for any calendar year. Present law generally does not require a taxpayer who must file an information return to furnish a copy to the person to whom the payment relates. However, such a requirement is imposed as to some information returns. See *Summary of H.R. 4242* prepared by Staff of The Joint Committee on Taxation (8/5/81) at 46.

The new law generally requires that information returns be furnished to the person to whom the payments on the return relate. The '81 Act also increases the penalty for failure to file most information returns with the IRS. the increased penalty is \$10 for each return, subject to a max-

imum penalty of \$25,000 for any calendar year. As under present ("old") law, the penalty does not apply if the failure is due to reasonable cause and not to willful neglect. The new provision is effective as to returns and statements to be furnished after December 31, 1981. *Summary of H.R. 4242*, prepared by Staff of The Joint Committee on Taxation (8/5/81) at 46.

3. Fringe Benefit Freeze Extended Through 1983

The 1981 Act continues through December 31, 1983, the freeze on IRS regulations on fringe benefits. The freeze was first enacted by Congress in 1978 and later extended. However, it had expired on May 31, 1981. The Congress believes that it and the IRS/Treas. need more time to review the tax treatment of existing fringe benefits, and that additional hearings are in order on valuation issues. See H. Report at 282; *Summary of H.R. 4242* prepared by the Staff of The Joint Committee on Taxation (8/5/81) at 50.

Please note that this newly extended "freeze" does not preclude the IRS from taking positions in audit of the tax returns. This means the IRS can still make proposed adjustments in audit on fringe benefit issues not yet resolved by final regulations or Revenue Rulings. However, the Committee on Wage and Means stated its "intent" that the "Treasury Department will not alter, or deviate from, in any significant way, the historical treatment of fringe benefits through the issuance of revenue rulings or revenue procedures, etc." H. Rept. at 283. It would seem that the IRS should respect this mandate.

Some Examples of "Fringe Benefit" IRS Has Sought To Attack

In early 1981 the issue of fringe benefits resurfaced when former Secretary of the Treasury Miller sent a discussion draft of regulations to Chairman Daniel Rostenkowski of the House Committee on Way and Means. Treas. Dept. Discussion Draft on Fringe Benefits (not filed in Fed. Reg.), CCH Stan. Fed Tax Repts.

8991 (1/29/81). This marked the second time in the last five years the Treasury has published a draft of fringe benefit regs. The new drafts covered taxable items such as (1) value of personal flights in company plane, (2) free personalized investment planning to employees, (3) company-paid membership in local clubs and organizations encouraging participation in community activities, (4) personal loans at low rates of interest to officers, and (5) other items such as "retail value" of company trips where such on the facts are not considered primarily for business and such things as "discount parking." As pointed out above, the '81 Act extends through December 31, 1983, the freeze on IRS regulations on fringe benefits.

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